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WHEN: Tuesday, March 13, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8782 of March 5, 2012

National Consumer Protection Week, 2012

By the President of the United States of America

A Proclamation

Millions of Americans use financial products, including credit cards, mortgages, and student loans, to build the foundation for a better tomorrow. These tools help bring our aspirations within reach and empower countless individuals to earn an education, afford a home, or raise a family. Yet, irresponsible lending and deceptive practices pose serious risks to consumers and our economy alike. During National Consumer Protection Week, we recommit to empowering all Americans with the clear and concise information they need to make financial decisions, and to encouraging open and honest competition in the marketplace.

For 14 years, consumer advocacy groups, private organizations, and agencies at every level of government have come together to celebrate National Consumer Protection Week by highlighting the ways individuals and families can protect themselves from scams, fraud, and abuse. Robust consumer education is essential to a healthy economy, and I encourage all Americans to learn more about money management, avoiding identity theft, understanding loans and mortgages, and other topics at: www.NCPW.gov.

With the leadership of the Consumer Financial Protection Bureau (CFPB) and Director Richard Cordray, my Administration continues to look out for the interests of everyday Americans by strengthening oversight and accountability in the financial sector and fighting for the protections consumers deserve. Last year, we launched the ''Know Before You Owe'' campaign to simplify home loan applications, student financial aid packages, and credit card agreements and make it easier for consumers to compare options. We are reaching out to seniors, service members, and others who face unique financial challenges to help them access the tools and resources they need. To better understand the issues confronting consumers across our country, we are also engaging individuals and organizations and ensuring they have a voice at the CFPB. To share your own experience with consumer financial products, file a complaint, or find more information about how the CFPB is protecting American families, visit: www.ConsumerFinance.gov.

For centuries, our Nation has endeavored to uphold a principle that will forever remain at the heart of the American promise—that with hard work and responsibility, every individual deserves the opportunity to get ahead. As we continue to restore financial security through strong consumer protections, we help ensure no American is left to face unfair practices alone and every family has the chance to preserve and pass down what they have worked so hard to achieve.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 4 through March 10, 2012, as National Consumer Protection Week. I call upon government officials, industry leaders, and advocates across the Nation to share information about consumer protection and provide our citizens with information about their rights as consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of March, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–5787
Filed 3–7–12; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0004]

RIN 0563–AC29

Common Crop Insurance Regulations; Onion Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Onion Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2013 and succeeding crop years.

DATES: This rule is effective April 9, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Onion Crop Insurance Provisions that were published by FCIC on July 21, 2011, as a notice of proposed rulemaking in the **Federal Register** at 76 FR 43606–43610. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 35 comments were received from 6 commenters. The commenters were insurance providers, an insurance service organization, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter stated many of the proposed changes in the Onion Crop Provisions Proposed Rule, as explained in the ''Background'' section, appear to be reasonable.

Response: FCIC thanks the commenter for their review of the proposed rule and their support.

Section 1—Definitions

Comment: A few commenters recommended beginning the definition of ''non-storage onions'' with the phrase ''Onions of a Bermuda, Granex, or Grano variety * * *'' consistent with the definition of ''storage onions.''

Response: FCIC agrees with the commenters and has revised the provision accordingly.

Comment: A few comments were received regarding the definition of ''onion production.'' The commenters stated FCIC proposed removing the phrase ''of recoverable size and condition'' because as stated in the Background of the proposed rule ''these terms are vague and ambiguous.'' However, if that phrase is deleted, the commenters questioned whether it will mean that onions that are too small to recover could be considered ''onion production.'' The definition of ''damaged onion production'' includes onions that do not meet certain grade standards. The commenters questioned whether it is supposed to be implied that (undamaged) ''onion production'' will always meet those standards. The commenters questioned whether this definition should also include some reference to those standards. While damaged onions are considered storage type onions that do not grade U.S. No. 1 or do not satisfy any other standards that may be contained in the Special Provisions, or non-storage type onions that do not satisfy any applicable marketing order (i.e., U.S. commercial), there are many times the insurance provider has had to deal with unharvested onions that obviously made grade, but there is a crop production loss, and they are able to determine the production to count based on weighing what the harvest equipment could pick up without having to have the crop graded by state/federal graders. The insurance provider was able to get the producer to harvest a representative strip and did not have to manually dig the onions with shovels, or deal with grading. The commenters felt the deleted phrase either needs to be retained, or if it is considered to be too vague, it can be further defined by indicating something about the size and condition that can be picked up by normal harvesting equipment. It would be very inefficient for adjusters to hand dig, bag and haul the really small onions that would not have been picked up by the harvesting equipment to have them graded because of the multitude of different marketing orders for size requirements that may be in effect. Additionally, if there is no language that production has to be of recoverable size and condition, would this mean insurance providers have to appraise every single harvested field to prove that any onions left in the field after harvest did not make grade? Would the insurance providers have to go to the Loss Adjustment Manual and prove the small onions were not able to be mechanically harvested?

Response: FCIC agrees and has retained the deleted phrase ''of recoverable size and condition'' and has retained the current definition in the final rule.

Comment: A commenter stated the definition of ''planted acreage'' states, ''in addition to the definition contained in the Basic Provisions, onions must be planted in rows.'' The commenter noted in the Basic Provisions, planted acreage is ''land in which seeds, plants, or trees have been placed * * *'' The commenter asks if an onion set (bulb) may not be considered a seed (otherwise a conflict between direct seeded and transplanted will result). The commenter asked FCIC to consider revising the definition of ''planted acreage'' in the Onion Crop Provisions to ''* * * land in which seeds, sets, or plants have been placed * * *''

Response: Although no changes were proposed to this provision, the commenter has identified a potential conflict within the policy because sets, which are bulbs, are not considered seeds, plants or trees, which are used in the definition of planted acreage in the Basic Provisions. Therefore, sets must be added to the definition in these Crop Provisions. FCIC has revised the definition of ''planted acreage'' include a reference to sets.

Comment: A few commenters supported the change to the definition of ''production guarantee (per acre)'' that increased the first stage production guarantee for direct seeded onions from 35 percent to 45 percent of the final stage production guarantee, and also supported the corresponding change of the prevented planting coverage from 45 percent to 35 percent in section 15. The commenters wanted FCIC to adequately account for any increased coverage in the rating methodology for areas where this first stage guarantee was not previously increased in the Special Provisions.

Response: FCIC agrees with the commenters and will evaluate and adjust premium rates as necessary.

Comment: A commenter stated the term ''sets'' is added as a definition, but is not used in the current Onion Crop Provisions or the proposed rule. The definition of ''transplanted'' continues to refer to ''* * * placing of the onion plant or bulb * * *'' The commenter asked FCIC to consider revising the definition of ''transplanted'' to read ''* * * placing of the plant or sets * * *'' and replace the term ''bulb'' with ''sets'' where it appears in the Onion Crop Provisions and is used in the context of planting the crop. The commenter stated this change provides consistency with usage of the term ''sets'' in proposed section 3(b)(2)(ii).

Response: FCIC agrees with the commenter and has revised the definition of ''transplanted'' by replacing the word ''bulb'' with ''sets.'' FCIC also agrees that transplanted and sets are used in the context of planting the acreage and has revised the definition of ''planted acreage'' to include direct seeded and transplanting to clarify the methods of planting the crops. These changes will provide consistency within the Crop Provisions.

Comment: A few commenters stated the definition of ''storage onions'' begins with the phrase ''Onions other than a Bermuda, Granex, or Grano variety'' and ends with the added sentence ''Includes varieties grown for a processor under the requirements of a processor

contract.'' The commenters questioned if Bermuda, Granex or Grano onions could ever be grown for processing resulting in a contradiction between these two sentences. The commenters stated perhaps this potential conflict could be resolved by moving the added language to the first sentence to state ''Onions other than a Bermuda, Granex, or Grano variety, or hybrids developed from these varieties, and including onions grown under a processor contract.'' The commenters stated another alternative is if the added last sentence is left where it is, it could begin with ''Storage onions include varieties * * *'' and consider if it would be sufficient to say ''grown under a processor contract'' or ''grown for processing'' instead of ''grown for a processor under the requirements of a processor contract.''

Response: FCIC agrees with the commenters and has revised the provisions by removing the last sentence. It is the type of onion that determines whether it is a storage onion, not whether it is grown under a contract. Therefore, this provision is not needed. Any onions meeting the definition are considered storage onions, and this would include onions grown under a processing contract if they meet the requirements.

Comment: A few commenters recommended in the definition of ''storage onions'' to add a comma in the first sentence after the phrase ''or hybrids developed from these varieties'' similar to the definition of ''non-storage onions.''

Response: FCIC agrees with the commenters and has revised the definition accordingly.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A commenter recommended revising section 3(b) from ''* * * same stage to qualify for the applicable stage guarantee * * *'' to ''* * * same stage to qualify for the first and second stages * * *'' The commenter stated the current provision incorrectly suggests that eligibility for the final stage requires a determination that at least 75 percent of the plants have reached the final stage when in fact the final stage is based on the completion of topping and lifting or digging the onion acreage.

Response: Although no changes were proposed to this provision, the commenter has identified a conflict in the provisions that need to be corrected to eliminate this ambiguity. FCIC has revised section 3(b) to clarify all stages are determined on an acre basis and only the first and second stage rely on a percentage of plants reaching a growth stage to determine eligibility for the applicable stage.

Comment: A commenter questioned if the phrase ''* * * until eligible for the final stage'' is required in section 3(b)(2), should it not also be included in section 3(b)(1) as follows ''* * * until eligible for the second stage.''

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. No change has been made to the final rule.

Comment: Several commenters requested FCIC further clarify the phrase ''* * * the majority of producers in the area would not normally further care for the onions * * *'' in section 3(c). The commenters stated the insurance providers need to have the option to stage the crop according to the date of damage based on their assessment of the severity of the damage without this being a point of contention with producers. The commenters stated this language has proved extremely difficult to administer and poses a real problem in areas where there are very few producers of a particular crop.

Response: FCIC understands the commenters concern that it can be difficult to determine a majority in an area that has few producers of the insured crop. The provision is flexible so that no matter the total number of producers of the crop in the area, an insurance provider will base their determination on a simple majority. This provision is necessary to prevent program abuse of advancing the stages of a heavily damaged crop in order to receive a higher production guarantee resulting in a larger indemnity payment. When an insurance provider determines the crop is damaged to the extent that the majority of producers would not further care for the damaged crop then the liability will be limited to the stage production guarantee when the damage occurred. The proposed first sentence ''The indemnity payable for any acreage of onions will be based on the stage the plants achieved when damage occurred'' could be misinterpreted to mean that any amount of damage to the onion crop would stop the progression of the production guarantee. FCIC has revised section 3(c) by removing the proposed first sentence because it conflicts with the rest of the provision.

Section 5—Cancellation and Termination Dates

Comment: A commenter stated the proposed cancellation and termination date of November 30 for all California Counties, except Lassen, Modoc, Shasta and Siskiyou do not align with the distinct growing period of California. The commenter stated the planting of onions in California generally begins as early as September and, therefore, September 30 would be a more appropriate date for cancellation and termination in this region of the country.

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Section 6—Report of Acreage

Comment: A few commenters stated the Special Provisions for onions in Georgia designate separate planting periods, but the Onion Crop Provisions are silent on this issue. The commenters requested the Onion Crop Provisions or the Special Provisions for Georgia be amended to include a definition of ''planting period.'' The commenters also requested adding a provision to section 6 of the Onion Crop Provisions which would amend section 6(a)(3) of the Basic Provisions, and make it clear when acreage reports for onions are due in these counties in situations where producers may also have other crops insured under the same policy.

Response: FCIC disagrees that the Special Provisions for Georgia designate separate planting periods. The Special Provisions for Georgia list planting dates for separate practices of planting such as direct seeded and transplanted. The onion crop is planted earlier for the direct seeded practice and later for the transplanted practice. For either practice of planting the onion crop results in similar development, maturity, and harvest periods. Since there are not separate planting periods, section 6(a)(3) of the Basic Provisions is not applicable. The planted and insured onion crop acres must be reported by the latest applicable acreage reporting date specified in the Special Provisions. No change has been made to the final rule.

Section 10—Insurance Period

Comment: A commenter stated the proposed language separating the end of insurance date for Walla Walla Sweets (July 31st) from other non-storage onions (August 31st) is incorrect for Oregon and Washington. The commenter recommended revising the language for Oregon and Washington to read ''July 31 for fall planted non-storage onions in Oregon and Washington.''

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Comment: A commenter stated in section 10(b)(2) the words ''Basic

Provision'' should be corrected to ''Basic Provisions.''

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Section 11—Causes of Loss

Comment: A commenter recommended section 11(a)(2) be revised to clarify an insured cause of loss is ''Fire, due to natural causes, * * *'' or ''Fire, if caused by lightning, * * *'' as in the proposed revisions to the Tobacco Crop Provisions.

Response: FCIC disagrees with the commenter. Revising the insured cause of loss to read ''Fire, due to natural causes * * *'' is not necessary since section 12 of the Basic Provisions states all insured causes of loss must be due to a naturally occurring event. Further, the Federal Crop Insurance Act also limits coverage to naturally occurring events. To include this requirement for a single cause of loss in the Onion Crop Provisions will only create confusion regarding whether or not the other listed causes must be naturally occurring. FCIC also disagrees with revising the insured cause of loss to read ''Fire, if caused by lightning * * *'' as in the proposed revisions to the Tobacco Crop Provisions. ''Fire, if caused by lightning * * *'' was proposed in the Tobacco Proposed Rule but due to public comments, the original provision, ''Fire,'' was retained because there are naturally occurring fires caused by something other than lightning, such as wildlife getting stuck in transformers causing sparks to trigger a fire. No change has been made to the final rule.

Section 13—Duties in the Event of Damage or Loss

Comment: Several commenters recommended revising section 13(a). A commenter suggested removing the word ''unharvested'' as representative samples of the unharvested crop that may be required cannot be topped, lifted, or dug as the term ''harvest'' by definition applies only after the acreage has been topped, lifted or dug, thus such acreage that is topped, lifted, or dug is still unharvested. This commenter further stated the proposed change does not achieve its objective (leaving the acreage undisturbed) as in the following sentence, ''The samples must not be harvested or destroyed until the earlier of our inspection * * *'' reverts back to the harvest term which describes removal of the onions from the field after lifting or digging. A few other commenters suggested moving the proposed phrase ''cannot be topped, lifted, or dug and'' to the last sentence, which would be revised to read, ''The samples must not be topped, lifted, dug, harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.'' These commenters suggested if the phrase is left in the first sentence to add a comma after the phrase ''or dug''.

Response: FCIC agrees with the commenters and will remove the word ''unharvested.'' FCIC will also move the added phrase ''cannot be topped, lifted, or dug and'' to the last sentence and change the wording accordingly as suggested.

Section 14—Settlement of Claim

Comment: A commenter stated in the section 14(b)(7) example, the total production to count is determined at the unit level not for part of the unit. The commenter asked FCIC to consider revising ''total production to count'' to ''harvested production to count.'' Similar revisions elsewhere in this example should be made using the words ''appraised'' or ''harvested'' as applicable or by removing the word ''total'' all together.

Response: FCIC has reviewed all references to the word ''total'' throughout the section 14(b)(7) example and revised them as necessary.

Comment: A commenter suggested in the introduction to the section 14(b)(7) example, revising the phrase ''16,000 hundredweight total production to count'' to ''16,000 hundredweight of harvested production to count.''

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Comment: A commenter suggested in step (3) of the section 14(b)(7) example, adding the word ''guarantee'' as in ''$24,000 value of second stage production guarantee * * *''

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Comment: A commenter suggested in step (4) of the section 14(b)(7) example, adding the phrase ''step 4'' into the phrase ''* * * (from section 14(c)(1)(iv) example) * * *''

Response: FCIC agrees with the commenter and has revised the provision to read ''(from step 4 of the section 14(c)(1)(iv) example).''

Comment: A commenter suggested in the section 14(c)(1)(iv) example, revising the phrase ''total production to count'' to ''appraised production to count'' for each instance the phrase is used. The commenter states section 14(c)(1) deals with determining appraised production to count, not total production to count. The commenter also states total production to count is determined at the unit level not for part of the unit.

Response: FCIC agrees with the commenter that section 14(c)(1) deals with appraised production, but the example for section 14(c)(1)(iv) deals with determining production to count for appraised production on acreage that does not qualify for the final stage guarantee. FCIC has revised the provisions by removing the term ''total'' but has not added the term ''appraised.''

Comment: A commenter suggested numbering the steps in the section 14(c)(1)(iv) example similar to how the steps were numbered for the section 14(b)(7) example.

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Comment: A commenter suggested in the fourth step of the section 14(c)(1)(iv) example adding the phrase ''step 4'' into the phrase ''* * * (for section 14(b) example) * * *''

Response: FCIC agrees with the commenter and has revised the provision to read ''(for step 4 of the section 14(b) example).''

Comment: A few commenters stated the section 14(c)(1)(iv) example disrupts the flow from (i), (ii), (iii), (iv), and (v). The commenters suggested three possible solutions for consideration: (1) Move the example to the end of 14(c); (2) Move both examples from section 14 to the end of the Crop Provisions with references to the examples in sections 14(b) and (c); or (3) Move the ''; and'' following section 14(c)(1)(iv) to the end of the example.

Response: FCIC disagrees with the commenters because the cited example after section 14(c)(1)(iv) specifically addresses the provisions as stated in section 14(c)(1)(iv). No change has been made.

Section 15—Prevented Planting

Comment: A few commenters expressed their support for the proposed change to the prevented planting coverage from 45 percent to 35 percent in section 15 and the corresponding increasing of the first stage coverage from 35 percent to 45 percent of the final stage production guarantee in the section 1 ''production guarantee (per acre)'' definition. The commenters stated that this change recognizes there are more costs incurred by a producer for onions damaged in the first stage versus a prevented planting situation.

Response: FCIC thanks the commenter for their review of the proposed rule and their support. The proposed changes have been retained in this final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, Onion, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.135 as follows:
■ a. Revise the introductory text;
■ b. Add definitions in section 1 for ''Processor'', ''Processor contract'', and ''Sets''; and revise the definitions of ''Direct seeded'', ''Non-storage onions'', ''Planted acreage'', ''Production guarantee (per acre)'', ''Storage onions'', ''Topping'', ''Transplanted''; and remove the definition of ''Type'';
■ c. Remove the first section 2 heading and revise section 2;
■ d. Amend section 3(a) by removing the phrase ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'';
■ e. Revise section 3(b) introductory text;
■ f. Revise sections 3(b)(2)(i), 3(b)(2)(ii), and 3(b)(3);
■ g. Revise section 3(c);
■ h. Revise section 4;
■ i. Revise section 5;
■ j. Redesignate sections 6 through 14 as sections 7 through 15, respectively, and add a new section 6;
■ k. Amend newly redesignated section 7 by removing the phrase ''(Annual Premium)'';
■ l. Revise newly redesignated section 8 introductory text;
■ m. Amend newly redesignated section 9 introductory text by removing the phrase ''(Insurable Acreage)'';
■ n. Amend newly redesignated section 9(a) by removing the word ''specified'' and adding the word ''designated'' in its place;
■ o. Amend newly redesignated section 10(a) by removing the phrase ''addition to'' and adding the phrase ''accordance with'' in its place, and also removing the phrase ''(Insurance Period)'';
■ p. Revise newly redesignated section 10(b);
■ q. Amend newly redesignated sections 11(a) introductory text and 11(b) by removing the phrase ''(Causes of Loss)'';
■ r. Amend newly redesignated section 12(a) by removing the phrase ''(Replanting Payment)'';
■ s. Revise newly redesignated section 13(a);
■ t. Amend newly redesignated section 14 by removing the phrase ''section 13'' and adding the phrase ''section 14'' in its place everywhere it appears;
■ u. Amend newly redesignated section 14(b)(6) by removing the phrase ''13(b)(3)'' and adding the phrase ''14(b)(3)'' in its place;
■ v. Add an example after newly redesignated section 14(b)(7);
■ w. Amend newly redesignated section 14(c)(1)(i)(B) by removing the phrase ''section 12'' and adding the phrase ''section 13'' in its place;
■ x. Revise newly redesignated section 14(c)(1)(iv);
■ y. Add an example after newly redesignated section 14(c)(1)(iv); and
■ z. Revise newly redesignated section 15.

The revised and added text reads as follows:

§ 457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 2013 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

Direct seeded. Onions planted by placing onion seed by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

Non-storage onions. Onions of a Bermuda, Granex, or Grano variety, or hybrids developed from these varieties, that are harvested as a bulb and dried only a short time, and consequently have a higher moisture content. They are thinner skinned, contain a higher sugar content, and are milder in flavor than storage onions. Due to a higher moisture and sugar content, they are subject to deterioration both on the surface and internally if not used shortly after harvest.

* * * * *

Planted acreage. In addition to the definition contained in the Basic Provisions, onions, including sets, must be direct seeded in rows or transplanted in rows.

Processor. Any business enterprise regularly engaged in buying and processing onions, that possesses all licenses and permits for processing onions required by the State in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted onions within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow onions of the types designated in the Special Provisions and to deliver the onion production to the processor;

(b) The processor's commitment to purchase all the production from a specified number of acres or the specified quantity of onion production stated in the processor contract; and

(c) The price that will be paid for the production.

Production guarantee (per acre).

(a) First stage production guarantee—Forty-five percent (45%) of the final stage production guarantee for direct seeded and transplanted storage and non-storage onions, unless otherwise specified in the Special Provisions.

(b) Second stage production guarantee—Seventy percent (70%) of the final stage production guarantee for direct seeded storage onions and 60 percent (60%) of the final stage production guarantee for transplanted storage onions and all non-storage onions, unless otherwise specified in the Special Provisions.

(c) Final stage production guarantee—The quantity of onions (in hundredweight) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Sets. Onion bulbs that are planted by hand or by machine.

Storage onions. Onions, other than a Bermuda, Granex, or Grano variety, or hybrids developed from these varieties, that are harvested as a bulb and dried to a lower moisture content, are firmer, have more outer layers of paper-like skin, and are darker in color than non-storage onions. They are more pungent, have a lower sugar content, and can be stored for several months under proper conditions prior to use without deterioration.

Topping. A pre-harvest process to initiate curing, in which onion foliage is removed or broken.

Transplanted. Onions planted by placing of the onion plant or sets, by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

2. Unit Division.

In addition to the requirements of section 34 of the Basic Provisions, optional units may be established by type, if separate types are designated in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) Your production guarantee progresses, in stages, to the final stage production guarantee. Stages will be determined on an acre basis. At least 75 percent (75%) of the plants on such acreage must be at the same stage to qualify for the first and second stages. The stages are as follows:

(2) * * *

(i) For direct seeded storage and non-storage onions, from the emergence of the fourth leaf until eligible for the final stage; and

(ii) For transplanted storage and non-storage onions, from the 31st day after transplanting of onion plants or sets until eligible for the final stage.

(3) Final stage extends from the completion of topping and lifting or digging on the acreage until the end of the insurance period.

(c) Any acreage of onions damaged in the first or second stage, to the extent that the majority of producers in the area would not normally further care for the onions, will have a production guarantee for indemnity purposes, based on the stage in which the damage occurred, even if you continue to care for the damaged onions.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is:

(a) June 30 preceding the cancellation date for counties with an August 31, September 30, or November 30 cancellation date;

(b) November 30 preceding the cancellation date for counties with a February 1 cancellation date; or

(c) As designated in the Special Provisions.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are as follows, unless otherwise designated in the Special Provisions:

State & County	Cancellation date	Termination date
Arizona; Georgia; Kinney, Uvalde, Medina, Bexar, Wilson, Karnes, Bee, and San Patricio Counties, Texas, and all Texas Counties lying south thereof.	August 31	August 31.
Umatilla County, Oregon; and Walla Walla County, Washington	August 31	September 30.
All California Counties, except Lassen, Modoc, Shasta and Siskiyou	September 30	September 30.
Hawaii	September 30	November 30.
All other states and counties	February 1	February 1.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, if the Special Provisions require a processor contract to insure your onions, you must provide a copy of all your processor contracts to us on or before the acreage reporting date.

* * * * *

8. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the storage and non-storage onions (excluding green (bunch) or seed onions, chives, garlic, leeks, shallots, and scallions) in the county for which a premium rate is provided by the actuarial documents:

* * * * *

10. Insurance Period.

* * * * *

(b) In accordance with the provisions of section 11 of the Basic Provisions, unless otherwise designated in the Special Provisions, the insurance period ends at the earliest of:

(1) The calendar date for the end of the insurance period as follows:

(i) May 20 for 1015 Super Sweets, and any other non-storage onions in Cameron, Hidalgo, Starr, and Willacy Counties, Texas;

(ii) June 1 for Vidalia, and any other non-storage onions planted in the state of Georgia;

(iii) June 30 for all storage and non-storage onions in Arizona;

(iv) July 15 for 1015 Super Sweets, and any other non-storage onions for all Texas counties except Cameron, Hidalgo, Starr, and Willacy;

(v) July 31 for fall planted non-storage onions in Oregon and Washington;

(vi) August 31 for all non-storage onions not otherwise specified; and

(vii) October 15 for all storage onions not otherwise specified; or

(2) In addition to the requirements of section 11(b) of the Basic Provisions, fourteen days after lifting or digging.

* * * * *

13. Duties in the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, any representative samples of the crop that may be required must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be topped, lifted, dug, harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

* * * * *

14. Settlement of Claim.

* * * * *

(b) * * *

(7) * * *

For Example:

You have a 100 percent share in 100 acres of a unit of transplanted storage onions with a production guarantee of 200 hundredweight per acre, and you select 100 percent of the price election of $8.00 per hundredweight. Your crop suffers a covered cause of loss on 25 acres during the second stage which has a second stage production guarantee of 60 percent of the final stage production guarantee which equals 120 hundredweight per acre. The appraised production on the 25 acres was 2,500 hundredweight of onion production. Your harvested onion production on the remaining 75 acres is 16,000 hundredweight of harvested production to count. Your indemnity will be calculated as follows:

(1) 25 acres × 120 hundredweight (200 × .60) second stage production guarantee = 3,000 hundredweight, and 75 acres × 200 hundredweight final stage production guarantee = 15,000 hundredweight;

(2) 3,000 hundredweight second stage production guarantee × $8.00 price election = $24,000 value of second stage production guarantee, and 15,000 hundredweight final stage production guarantee × $8.00 price election = $120,000 value of final stage production guarantee;

(3) $24,000 value of second stage production guarantee + $120,000 value of final stage production guarantee = $144,000 total value of production guarantee;

(4) 500 hundredweight second stage production to count (from step 4 of the section 14(c)(1)(iv) example) × $8.00 price election = $4,000 value of second stage production to count, and 16,000 hundredweight final stage production to count × 8.00 price election = $128,000 value of final stage production to count;

(5) $4,000 value of second stage production to count + $128,000 value of final stage production to count = $132,000 total value of production to count;

(6) $144,000 total value of production guarantee − $132,000 total value of production to count = $12,000 value of loss; and

(7) $12,000 × 100 percent share = $12,000 indemnity payment.

(c) * * *

(1) * * *

(iv) For acreage that does not qualify for the final stage production guarantee, and is not subject to section 14 (c)(1)(i) and (ii), the appraised production is reduced by the difference between the first or second stage (as applicable) and the final stage production guarantee; and

For Example:

You have 100 acres of a unit of transplanted storage onions with a production guarantee of 200 hundredweight per acre. Your crop suffers a covered cause of loss on 25 acres during the second stage which has a second stage production guarantee of 60 percent of the final stage production guarantee. The appraised production on the 25 acres was 2,500 hundredweight of onion production. Your second stage production to count on the 25 acres will be calculated as follows:

(1) 25 acres × 200 hundredweight final stage production guarantee = 5,000 hundredweight final stage production guarantee,

(2) 5,000 hundredweight final stage production guarantee × 60 percent second stage production guarantee = 3,000 hundredweight second stage production guarantee,

(3) 5,000 hundredweight final stage production guarantee − 3,000 hundredweight second stage production guarantee = 2,000 hundredweight difference between second stage and final stage production guarantee, and

(4) 2,500 hundredweight appraised − 2,000 hundredweight difference = 500 hundredweight second stage production to count (for step 4 of the section 14(b) example).

* * * * *

15. Prevented Planting.

Your prevented planting coverage will be 35 percent (35%) of your final stage production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for onions.

Signed in Washington, DC, on February 29, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–5652 Filed 3–7–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. FAA–2012–0245]

Notice of Intent To Discontinue Use of Paper Applications for Airman Medical Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent

SUMMARY: The Federal Aviation Administration is providing public notice regarding its intent to discontinue use of the paper version of FAA Form 8500–8, the application form used to apply for FAA medical certification. Maintaining FAA Form 8500–8 for applicants to complete manually is burdensome not only in terms of the cost involved, but also in terms of the complex logistics and use of Agency resources involved. This burden becomes all the more compounded when the form must be revised, reprinted, and redistributed (worldwide). The FAA launched an on-line FAA Form 8500–8 application known as ''FAA MedXpress'' beginning in 2007. Since 2007, ''FAA MedXpress'' has evolved considerably, streamlining FAA medical certification into a much more efficient and seamless process, thereby rendering the paper process both redundant and obsolete. Discontinuing print of FAA Form 8500–8 will save considerable resources and improve the efficiency of the airman medical certification process.

DATES: This action goes into effect on October 1, 2012. It should be noted, however, that ''FAA MedExpress'' already is fully operational and ready for use.

ADDRESSES: You can obtain an electronic copy of this document by—

1. Searching the Federal eRulemaking Portal at *http://www.regulations.gov;*

2. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR;* or

3. Contacting the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9689; email *Judi.M.Citrenbaum@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA receives and reviews annually more than 400,000 applications for airman medical certification. Until 2007, the only available means for making application was for applicants to manually complete an FAA Form 8500–8 provided by an FAA-designated Aviation Medical Examiner (AME) at the time of medical examination and for AMEs to record the results of the applicant's medical examination on the reverse side of application form manually. Since 2007, when the FAA launched a digital version of FAA Form 8500–8, applicants have been able to complete the form prior to an appointment with an AME for an FAA medical examination by accessing it on line using a secure, password-protected FAA system, known as ''FAA MedXpress.'' At the time of the medical examination, therefore, an AME merely accesses the applicant's completed and securely stored FAA Form 8500–8 in ''FAA MedXpress'' and uses it to complete the medical examination and record the results. ''FAA MedXpress'' also provides both applicants and AMEs the capability to print the form for whatever purpose needed.

FAA Form 8500–8 is considered one of the most complex of paper forms still in use in the Federal Government. More than 5 years of experience with ''FAA MedXpress'' has streamlined the FAA medical certification process into a more seamless and efficient process. Having digitized data, rather than handwritten copy, reduces the risk of errors being made by applicants, AME staff, and AMEs in processing the examination. Using ''FAA MedXpress'' exclusively will allow the FAA to make and implement any needed or mandated changes to the FAA Form 8500–8 in a more timely manner, resulting in a more dynamic form and eliminating the considerable cost and logistical challenges involved with printing and distributing the form both within and outside of the United States. Whenever the form must be revised, the initial reprinting and redistribution of approximately 1.5 million revised forms worldwide is very costly and considerable waste is incurred disposing of superseded forms.

Many federal forms, including FAA forms, (such as applications for pilot certificates and ratings) are now fully

automated. Use of on-line applications in the private sector also is fairly standard—such as applications to academic institutions; for car loans; for mortage application and refinancing; for employment, and the like. Fully automating the FAA airman medical certification application process will improve efficiency, lead to reduced errors with applicant data, allow for more seamless processing, and save considerable resources by eliminating the recurrent cycle of printing, distributing, reprinting, and redistributing paper forms.

Individuals who may not be familiar with ''FAA MedXpress'' may access it on the FAA public Web site at *https://medxpress.faa.gov.*

Issued in Washington, DC, on March 1, 2012.

Frederick E. Tilton,

Federal Air Surgeon.

[FR Doc. 2012–5655 Filed 3–7–12; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2011–0094]

Requiring Electronic Filing of Select Appeals by Certain Claimant Representatives

AGENCY: Social Security Administration.

ACTION: Revised notification of implementation of requirement.

SUMMARY: We are revising the Notification of implementation of requirement we published on January 31, 2012 (77 FR 4653). We are clarifying the requirement that appointed representatives file certain appeals using our electronic systems in matters for which the representatives request direct fee payment. Specifically, we are clarifying that the electronic filing requirement includes both the submission of the forms we require to file the appeal request and the Disability Report—Appeal. This is the first service required under the regulation we published on September 12, 2011 (76 FR 56107), Requiring Use of Electronic Services.

DATES: The effective date of this revised notification of implementation of requirement is March 16, 2012.

FOR FURTHER INFORMATION CONTACT: Joann S. Anderson, Social Security Administration, Office of Income Security Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–6716.

For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Requiring Electronic Filing of Appeals

On September 12, 2011, we published final rules that require representatives to conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. At the time, we did not require representatives to use any specific electronic service. Rather, in the preamble to the final rule (76 FR 56107), we stated that, ''Once we determine that we should make a particular electronic service publicly available because it works well, we will publish a notice in the **Federal Register**. The notice will contain the new requirement(s) and a list of all established electronic service requirements.'' We also said in the preamble that we would adjust the burden for affected Office of Management and Budget (OMB) approved collections before requiring representatives to use the collections' electronic versions. We published notices on December 1, 2011 (76 FR 74838) and January 31, 2012 (77 FR 4857) concerning the burden adjustment for the affected electronic services under OMB No. 0960–0144, Disability Report-Appeal, OMB No. 0960–0269 (Request for Hearing by Administrative Law Judge), and OMB No. 0960–0622, Request for Reconsideration.

On January 31, 2012, we published a notification of implementation of requirement in the **Federal Register** providing information about the first required electronic service under the final rules that we published in September 2011. We are now clarifying that requirement.

As of March 16, 2012, we will begin mandating electronic filing of certain appeals in each matter in which a representative requests direct payment of the authorized fee. This electronic filing requirement includes the filing of a request for reconsideration or for a hearing by an administrative law judge for disability claims under title II of the Social Security Act (Act) or Supplemental Security Income claims based on disability or blindness under title XVI of the Act denied for medical reasons. To satisfy this electronic filing requirement, the representative must submit both the request for reconsideration or hearing and the electronic Disability Report—Appeal, using our Internet Appeals web portal found at *www.socialsecurity.gov.* The Internet Appeals web process utilizes electronic versions of OMB's approved information collection instruments: the Request for Reconsideration (OMB No. 0960–0622), the Request for Hearing by Administrative Law Judge (OMB No. 0960–0269), and the Disability Report—Appeal (OMB No. 0960–0144).

A representative has an affirmative duty to comply with this requirement. We may investigate to determine if a representative purposefully violated this duty or is attempting to circumvent our rules. We may sanction a representative who does not follow these rules. However, we will not reject or delay a claimant's request or process it differently if a representative fails to comply with this electronic filing requirement.

Claimants, whether they are represented or not, and representatives who are not eligible for or who do not request direct fee payment on a matter, may continue to file all appeal requests either electronically, on paper, or in any manner we prescribe.

Additional Information

Additional information is available on our Representing Claimants Web site at *http://www.ssa.gov/representation/or* it can be obtained by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

Dated: March 5, 2012.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2012–5673 Filed 3–7–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9572]

RIN 1545–BK53

Dividend Equivalents From Sources Within the United States; Correction

AGENCY: Internal Revenue Service (IRS).

ACTION: Temporary regulations; correcting amendment.

SUMMARY: This document contains corrections to temporary regulations (TD 9572), relating to dividend equivalents from sources within the United States.

DATES: *Effective Date:* March 8, 2012 and is applicable January 23, 2012.

FOR FURTHER INFORMATION CONTACT: D. Peter Merkel (202) 622–3870.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections are under section 1441 of the Internal Revenue Code.

Need for Correction

As published, temporary regulations (TD 9572), published in the **Federal Register** on January 23, 2012 (77 FR 3108) contains errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.1441–4 [Amended].

■ **Par. 2.** Section 1.1441–4 is amended by revising paragraphs (a)(3)(i) and (a)(3)(iii) to read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) * * *

(3) * * *

(i) [Reserved]. For further guidance, see § 1.1441–4T(a)(3)(i).

* * * * *

(iii) [Reserved]. For further guidance, see § 1.1441–4T(a)(3)(iii).

* * * * *

§ 1.1441–4T [Amended]

■ **Par. 3.** Section 1.1441–4T is amended by revising the first sentence of paragraph (a)(3)(i) to read as follows:

§ 1.1441–4T Exemptions from withholding for certain effectively connected income and other amounts (temporary).

(a) * * *

* * * * *

(3) *Income on notional principal contracts*—(i) *General rule.* Except as otherwise provided in paragraph (a)(3)(iii) of this section, a withholding agent that pays amounts attributable to a notional principal contract described in § 1.863–7T(a) or § 1.988–2(e) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. * * *

* * * * *

§ 1.1441–7 [Amended]

■ **Par. 4.** Section 1441–7 is amended by revising the introductory text of paragraph (a)(3) and *Example 6* to read as follows:

§ 1.1441–7 General provision relating to withholding agents.

(a) * * *

(3) *Examples.* The following examples illustrate the rules of paragraph (a) of this section:

* * * * *

Example 6. [Reserved]. For further guidance, see § 1.1441–7T(a)(3)

Example 6.

* * * * *

Guy R. Traynor,

Federal Register Liaison, Publication and Regulations, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–5315 Filed 3–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2011–0183]

RIN 1218–AC64

Revising Standards Referenced in the Acetylene Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; confirmation of effective date.

SUMMARY: OSHA is confirming the effective date of its direct final rule that revises the Acetylene Standard for general industry by updating the reference to a standard published by a standards-developing organization, the Compressed Gas Association. In the December 5, 2011, direct final rule, OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the direct final rule if the Agency received no significant adverse comments. OSHA did not receive significant adverse comments on the direct final rule. Therefore, OSHA is confirming that the direct final rule will become effective on March 5, 2012.

DATES: The direct final rule published on December 5, 2011 (76 FR 75782), is effective on March 5, 2012. For the purposes of judicial review, OSHA considers March 5, 2012, as the date of issuance.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:* Contact Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical information: Contact Ken Stevanus, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2260; fax: (202) 693–1663.

Copies of this **Federal Register** *notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also is available at OSHA's Web page at *http://www.osha.gov.*

ADDRESSES: In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the final standard. Contact Joseph M. Woodward, Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–5445.

SUPPLEMENTARY INFORMATION: On December 5, 2011, OSHA published a direct final rule (DFR) in the **Federal Register** that revised the Acetylene Standard for general industry by updating a reference to the Compressed Gas Association (GGA) acetylene standard (*see* 76 FR 75782). In the DFR, OSHA deleted reference to CGA G–1–2003 and replaced it with CGA G–1–2009. In that **Federal Register** document, OSHA also stated that it would confirm the effective date of the DFR if the Agency received no significant adverse comments.

OSHA received one comment on the DFR, which it determined was not a significant adverse comment. The commenter observed differences between provisions of the most recent Compressed Gas Association acetylene standard (CGA G–1–2009) and provisions of OSHA's oxygen-fuel gas

welding and cutting standard at 29 CFR 1910.253. After describing the differences, the commenter stated that ''the rulemaking process should include an assessment of how other existing OSHA Rules may be affected by the new or amended rule.'' However, the commenter did not object to the revised provisions adopted by the CGA G–1–2009 standard that are the subject of this rulemaking. Therefore, the Agency determined that this comment was neither significant nor adverse.

List of Subjects in 29 CFR Part 1910

Acetylene, General industry, Occupational safety and health, Safety.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this final rule. OSHA is issuing this final rule pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), 5 U.S.C. 553, Secretary of Labor's Order 1–2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC on March 2, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–5589 Filed 3–7–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that *USS MISSISSIPPI* (SSN 782) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective March 8, 2012 and is applicable beginning February 27, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MISSISSIPPI (SSN 782) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the vertical placement of the masthead light; Annex I, paragraph 2(k), pertaining to the vertical separation of the anchor lights and vertical placement of the forward anchor light above the hull; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table One by adding, in alpha numerical order, by vessel number, an entry for *USS MISSISSIPPI* (SSN 782); and

■ B. In Table Three by adding, in alpha numerical order, by vessel number, an entry for *USS MISSISSIPPI* (SSN 782).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
* * * * *	*	*
USS MISSISSIPPI	SSN 782	2.76
* * * * *	*	*

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relation-ship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	
USS MISSISSIPPI	SSN 782			209.0°	4.37	11.05	2.8	0.30 below.

Approved: February 27, 2012.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–5612 Filed 3–7–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0048]

RIN 1625–AA11

Regulated Navigation Area; MBTA Saugus River Railroad Drawbridge Rehabilitation Project, Saugus River, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Saugus River under and surrounding the Massachusetts Bay Transportation Authority (MBTA) Saugus River Railroad Drawbridge which crosses the Saugus River between Saugus and Lynn, Massachusetts. This temporary interim rule is intended to protect both vessels and construction workers by restricting vessel traffic during periods when the bridge is being repaired.

DATES: This rule is effective in the CFR from March 8, 2012, until 11:59 p.m. on November 30, 2012, and is effective with actual notice for purposes of enforcement February 17, 2012. Public comments will be accepted and reviewed by the Coast Guard through November 30, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0048 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

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

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

Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0048 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0048 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil* or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

As this temporary interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0048), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0048'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or

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

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0048'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 553. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe such a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

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

During an in-depth inspection of the railroad bridge structure, significant deterioration of the granite pier that supports the bascule bridge was observed. Out of safety concerns, the MBTA has instituted single track operation, a reduction of speed, and prohibited braking on the bridge until they can stabilize the pier. The long term goal is to replace the granite pier, but in the short term they have to add additional support to the bridge; this is being done by adding a new temporary support pier.

The MBTA notified the Coast Guard on January 10, 2012 that it intended to close the bridge for multiple weekends beginning in late February, 2012. It would be impracticable to issue an NPRM and take public comments within that timeframe, and it would be contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of waterway users operating in the vicinity of the bridge. The delay of necessary repair operations would result in increased costs, delay the date when the bridge is expected to reopen for normal operations, and have a larger impact on the boating public during the peak of the recreational boating season. Additionally, the potential dangers posed by the bridge in its current state demand immediate action. It is impracticable and contrary to the public interest to delay this regulation, especially in light of the fact that the Coast Guard may publish an amended rule at any time if necessary to address public concerns.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this interim rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the rehabilitation project of the MBTA Saugus River Railroad Drawbridge.

Discussion of Rule

This action is intended to control vessel traffic for the duration of the MBTA Saugus River Railroad Drawbridge rehabilitation over the main channel of the Saugus River. The construction work involves large machinery and construction vessel operations in the navigable waters of the Saugus River immediately surrounding the MBTA Saugus River Railroad Drawbridge. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the construction crew. The Coast Guard may close the regulated area described in this rule to all vessel traffic during any circumstance that poses an imminent threat to waterway users operating in the area. The weekend waterway closures will be made with as much advance notice as possible.

The Captain of the Port (COTP) Sector Boston will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by appropriate means to ensure the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, and Marine Safety Information Bulletins.

Entry into this RNA is prohibited unless authorized by the COTP Sector Boston. Any violation of this RNA is punishable by civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant mariner credentials.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

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

We expect the economic impact of this rule to be minimal because the amount of traffic in this waterway is extremely limited. Furthermore, the Captain of the Port has the ability to suspend the provisions of this regulation when necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' means small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: Local fishermen, the owners or operators of marinas, businesses (such as waterside restaurants), and vessels who intend to transit in the Saugus River beneath the MBTA Saugus River Railroad Drawbridge during the effective period.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: The primary waterway users, of which there are approximately six during this time of the year, are lobster fishermen. The parties that have the potential to be affected have been contacted through the Saugus Harbormaster and have made plans to work around the closure times. Additionally, we will use appropriate means to inform the public before, during, and at the conclusion of any RNA enforcement period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of an RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist and

categorical exclusion determination as appropriate.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0048 to read as follows:

§ 165.T01–0048 Regulated Navigation Area; MBTA Saugus River Railroad Drawbridge rehabilitation project, Saugus River, MA.

(a) *Location.* The following area is a Regulated

Navigation Area (RNA): All navigable waters, surface to bottom, on the Saugus River, within a 300 yard radius of position 42°26′50″ N, 70°58′19″ W in the vicinity of the MBTA Saugus River Railroad Drawbridge between Saugus and Lynn, MA.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply in addition to those provisions outlined below.

(2) In accordance with the general regulations, entry into or movement within this zone during periods of enforcement is prohibited unless authorized by Captain of the Port Sector Boston (COTP).

(3) All persons and vessels must comply with all directions given to them by the COTP or the on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel or other designated craft, or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Notwithstanding any other provisions in this regulation, the movement of official, emergency vessels within the regulated area will be permitted provided that the contractor is notified in order to remove potential hazards or obstructions.

(6) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR Subchapter E, Inland Navigational Rules), remain in effect within the regulated area and must be strictly followed at all times.

(c) *Enforcement period.* (1) This regulation is enforceable each week from Friday at 11 p.m. until Monday at 4 a.m., from February 24, 2012, through November 30, 2012.

(2) The COTP Sector Boston will cause notice of enforcement to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification may include but are not limited to Broadcast Notice to Mariners, Local Notice to Mariners, and Marine Safety Information Bulletins. Such notification will include the dates and times that enforcement will begin and end.

(d) *Penalties.* Failure to comply with this section may result in civil or criminal penalties pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq. Report violations of this regulated navigation area to the COTP Sector Boston, at 617–223–5757 or on VHF–Channel 16.

Dated: February 17, 2012.

D.A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2012–5329 Filed 3–7–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2011–0796, FRL–9645–4]

Approval and Promulgation of Implementation Plans; New York State Ozone Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a proposed revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,'' Part 234, ''Graphic Arts,'' and Part 241, ''Asphalt Pavement and Asphalt Based Surface Coating.'' The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

DATES: *Effective Date:* This rule will be effective April 9, 2012.

ADDRESSES: EPA has established a docket for this action under the Federal Docket Management System (FDMS) which replaces the Regional Materials in EDOCKET (RME) docket system. The new FDMS is located at *www.regulations.gov* and the docket ID for this action is EPA–R02–OAR–2011–0796. All documents in the docket are listed in the FDMS index. Publicly available docket materials are available either electronically in FDMS or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue NW., Washington, DC; and the New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

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I. What was included in New York's submittals?

On August 19, 2010 and December 15, 2010, the New York State Department of Environmental Conservation (NYSDEC),

submitted to EPA proposed revisions to the SIP, which included state adopted revisions to three regulations contained in Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,'' Part 234, ''Graphic Arts,'' and Part 241, ''Asphalt Pavement and Asphalt Based Surface Coating'' with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively. These revisions are applicable statewide and will therefore provide volatile organic compound (VOC) emission reductions statewide and will address, in part, attainment of the 1997 8-hour ozone national ambient air quality standards (NAAQS or standard) in the Poughkeepsie, Jefferson County and the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT (NYMA) moderate nonattainment areas.

II. What is EPA's evaluation of part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?''

Part 228 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions. In contrast to the Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives dated September 2008, Part 228 is applicable to all stationary sources including those applications that occur outside of the factory setting, such as applied in the field. In addition, it includes provisions that apply to the selling, supplying, offering for sale or manufacture for sale in New York of adhesives, sealants, adhesive primers and sealant primers, along with container labeling requirements and product registrations. The VOC content restrictions for these products apply to both their manufacture and application. Stationary sources also have the option of using add-on control equipment provided it achieves 85 percent control. Part 228 also regulates the VOC content/vapor pressure of surface-preparation and clean-up solvents for which the CTG did not make recommendations other than including work practices.

EPA recommends that when states evaluate reasonably available control technology (RACT), as required by section 182(b), when implementing a revised 8-hour ozone standard, that they review the VOC content limits for wood adhesives. This category of adhesives is included in the CTG recommended VOC emission limits. Overall, Part 228: (1) Regulates the same adhesives and adhesive primers as the CTG with the addition of regulating sealants and sealant primers, (2) applies to additional stationary sources, and (3) provides for similar exemptions as the CTG recommends.

EPA has evaluated New York's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA has determined that Part 228 is as effective in regulating this source category as the CTG and is approving it as part of the SIP and as meeting the requirement to adopt a RACT rule for the Miscellaneous Industrial Adhesives CTG category.

III. What is EPA's evaluation of part 234, ''Graphic Arts?''

Part 234 contains the required elements for a federally enforceable rule: Emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

In contrast to the two CTG documents, one for Offset Lithographic Printing and Letterpress Printing and a second for Flexible Package Printing, issued by EPA in September 2006, Part 234 is generally applicable to all graphic arts facilities located in a severe ozone nonattainment area, which includes the NYMA, or to facilities that emit total actual annual VOC graphic arts emissions of three tons or more on a 12-month rolling basis, which is consistent with or more stringent than the CTG's.

Offset Lithographic Printing and Letterpress Printing

In addition to the general revisions to Part 234, the revised section 234.3 addresses the CTG for Offset Lithographic Printing and Letterpress Printing. Subsections (b), (c) and (d) were added and require more stringent emission controls. Subsection 234.3(b) requires control equipment achieve overall removal efficiencies, i.e., 90 percent if installed prior to July 8, 2010 and 95 percent if installed on or after July 8, 2010. Subsection 234.3(d) includes the VOC limits for heatset web, sheet-fed and cold-set offset lithographic printing processes. Subsection 234.3(c) limits provisions for cleaning materials to a composite vapor pressure less than 10 mm Hg (millimeters mercury) or VOC content of less than 70 percent by weight, with some exceptions. In addition, section 234.6 requires best management practices for handling, storage and disposal of VOCs, such as keeping VOC and VOC containing materials in closed containers, keeping VOC containing shop towels in closed containers, and recordkeeping requirements. These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Clean Air Act, EPA regulations, and EPA policy and is approving them.

Flexible Package Printing

In addition to the general provisions of Part 234, the revised subsection 234.3(a) addresses the CTG for Flexible Package Printing. Subsection 234.3(a)(1)(ii) was added and requires more stringent emission controls for publication rotogravure and other printing processes. Subsection 234.3(a)(1)(i) contains new maximum allowable VOC content limits for inks, coatings and adhesives (minus water). Section 234.6 requires best management practices (see above description). These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Clean Air Act, EPA regulations, and EPA policy and is approving them.

IV. What is EPA's evaluation of part 241, ''Asphalt Pavement and Asphalt Based Surface Coating?''

Part 241 contains the regulatory provisions applicable to asphalt pavements and asphalt based surface coatings. These provisions were previously regulated under 6 NYCRR Part 205, ''Architectural and Industrial Maintenance (AIM) Coatings'' and Part 211, ''General Prohibitions.'' New York revised these two rules by removing the asphalt provisions and moving them into new rule Part 241.

New York removed the seasonal limit that allowed the use of cutback asphalt from October 16th to May 1st. Part 241 only allows the use of cutback asphalt in two circumstances: When the asphalt is used in the production of long-life stockpile material for pavement patching and repair and when the asphalt is used as a penetrating prime coat for the purpose of preparing a surface to receive asphalt pavement.

New York included a VOC content limit in Part 241 for asphalt surface coatings. No asphalt based surface coating may be applied, sold, offered for sale, or manufactured if it contains more than 100 grams of VOC per liter. This is consistent with the limit that was previously included in Part 205.

Part 241 also includes limits for emulsified asphalt. No emulsified asphalt, as classified under ASTM International standard specifications D 977 or D 2397 may be applied, sold, offered for sale, or manufactured that

contains oil distillate, as determined by ASTM International standard test method D 6997, in amounts that exceed the following limits (milliliters of oil distillate per 200 gram sample):

(a) Three milliliters for ASTM grades RS–1, SS–1, SS–1h, CRS–1, CSS–1, and CSS–1h;

(b) Five milliliters for ASTM grades RS–2, CRS–2, and HFRS–2;

(c) Sixteen milliliters for ASTM grades MS–2, HFMS–2 and HFMS–2h; and

(d) Twenty milliliters for ASTM grades CMS–2 and CMS–2h.

Similar limits were previously included in Part 211 but they were expressed as VOC content limits in percent by weight. The revised limits included in Part 241 are approximately 17–25 percent more stringent than what was previously included in Part 211.

EPA notes that while the revised limits in Part 241 are more stringent than the previous limits included in Part 211, the States of New Jersey, Delaware and Connecticut have adopted emission limits more stringent than Part 241, specifically during the ozone season months. EPA recommends that when New York evaluates RACT, as is required by section 182(b) when implementing a revised 8-hour ozone standard, that New York consider more stringent asphalt paving limits in line with those adopted by the neighboring states.

EPA evaluated the provisions of Part 241 for consistency with the Clean Air Act, EPA regulations, and EPA policy and is approving them.

V. What comments did EPA receive in response to its proposal?

On December 12, 2011 (76 FR 77178), EPA proposed to approve New York's revised Parts 228, 234 and 241. For a detailed discussion on the content and requirements of the revisions to New York's regulations, the reader is referred to EPA's proposed rulemaking action.

In response to EPA's December 12, 2011 proposed rulemaking action, EPA received no comments.

VI. What is EPA's conclusion?

EPA has evaluated New York's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA is approving the revisions made to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,'' Part 234, ''Graphic Arts,'' and new Part 241, ''Asphalt Pavement and Asphalt Based Surface Coating,'' with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively. EPA has determined that the revisions meet the SIP requirements of the Clean Air Act and fulfill the recommended controls identified in the applicable CTGs. EPA is approving these revisions and is also approving the revisions made to 6 NYCRR Part 205, ''Architectural and Industrial Maintenance (AIM) Coatings'' and Part 211, ''General Prohibitions,'' both effective January 1, 2011, to avoid redundancy and conflict of the asphalt paving and coating provisions included in new Part 241.

VII. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 7, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 27, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart HH—New York

■ 2. In § 52.1670, the table in paragraph (c) is amended by revising the entries for Title 6, Parts 205, 211, 228 and 234 and adding new entry Part 241 in numerical order to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6			
* *	*	* *	* *
Part 205, Architectural and Industrial Maintenance (AIM) Coatings.	1/1/11	3/8/12 [Insert page number where the document begins].	
* *	*	* *	* *
Part 211, General Prohibitions	1/1/11	3/8/12 [Insert page number where the document begins].	Section 211.1 (previously numbered 211.2) is not part of the approved plan. (see 11/27/98, 63 FR 65559)
* *	*	* *	* *
Part 228, Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers.	9/30/10	3/8/12 [Insert page number where the document begins].	
* *	*	* *	* *
Part 234, Graphic Arts	7/8/10	3/8/12 [Insert page number where the document begins].	SIP revisions submitted in accordance with § 234.3(f) are effective only if approved by EPA.
* *	*	* *	* *
Part 241, Asphalt Pavement and Asphalt Based Surface Coating.	1/1/11	3/8/12 [Insert page number where the document begins].	
* *	*	* *	* *

[FR Doc. 2012–5646 Filed 3–7–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0873; FRL–9643–9]

RIN 2060–AH23

Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; announcement of extension of comment period.

SUMMARY: The EPA is extending the comment period for the direct final rule titled, ''Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources,'' that were published in the **Federal Register** on February 14, 2012. The 30-day comment period is scheduled to end on March 15, 2012. The extended comment period will close on April 30, 2012. The EPA is extending the comment period because of a request we received in a timely manner.

DATES: The comment period for the direct final February 14, 2012 (77 FR 8160), is extended. Comments must be received on or before April 30, 2012. The effective date for the rule remains April 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0873 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2010–0873, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* The EPA Docket Center, EPA West, 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–OAR–2010–0873. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your

comment and with any disk or CD–ROM you submit. If 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document or visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Procedure 3—Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Docket Facility and Public Reading Room are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742, and the telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Ms. Lula H. Melton, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone: (919) 541–0880, email: *morales.roberto@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2010–0873. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of the direct final rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Dated: March 1, 2012.

Mary Eileen Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–5433 Filed 3–7–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2008–0059, Notice No. 5]

RIN 2130–AB96

Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; delay of effective date and request for comments.

SUMMARY: This document delays the effective date of the final rule published November 30, 2011, and scheduled to take effect on May 1, 2012. The final rule mandates that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on-track equipment on ''adjacent controlled track,'' and requests comments on the petitions for reconsideration of the final rule that FRA has received. In response to the final rule, FRA received two petitions for reconsideration that raise a number of substantive issues requiring a detailed response. Accordingly, in order to respond fully to the petitions for reconsideration and for the reasons set forth below, this document delays the effective date of the final rule until July 1, 2013. FRA is establishing a 60-day comment period in order to permit interested parties an opportunity to respond to the submitted petitions for reconsideration.

DATES: The effective date for the final rule published November 30, 2011, at 76 FR 74586, and originally effective on May 1, 2012, is delayed until July 1, 2013. Comments in response to the petitions for reconsideration must be received on or before May 7, 2012.

ADDRESSES: *Comments on the Petitions for Reconsideration:* Any comments on the petitions for reconsideration related to Docket No. FRA–2008–0059, Notice No. 4, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, M–33, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* Docket Management Facility, U.S. Department

of Transportation, West Building, Ground Floor, M–33, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: All submissions must include (1) the agency name and (2) either the docket number for this rulemaking (Docket No. FRA–2008–0059) or the current Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AB96). Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading under the **SUPPLEMENTARY INFORMATION** section of this preamble.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Track Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS–15, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6236); or Anna Winkle, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6166 or 202–493–6052).

SUPPLEMENTARY INFORMATION: On November 30, 2011, FRA published a final rule amending its regulations on railroad workplace safety to further reduce the risk of serious injury or death to roadway workers performing work with potentially distracting equipment near certain adjacent tracks. See 76 FR 74586. In particular, the rule requires that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on- track equipment on ''adjacent controlled track.'' The effective date of this final rule was to be May 1, 2012. In response to the final rule, FRA received two petitions for reconsideration that raise substantive issues, requiring a detailed response from FRA. One of the petitions requests a delay in the effective date of the final rule until July 1, 2013, for reasons related to the railroads' safety training schedules. In addition, since the publication of the final rule, it has come to FRA's attention that, while the overwhelming majority of railroads complete their annual training of roadway workers by May 1st of each calendar year, there is at least one railroad that does not complete its training by that date but that would complete it by July 1st of the calendar year. Accordingly, in order to allow FRA appropriate time to consider and fully respond to the petitions for reconsideration and to accommodate all of the railroads' normal training schedules, this document delays the effective date of the final rule until July 1, 2013. Therefore, any requirements imposed by the final rule need not be complied with until July 1, 2013.

Additionally, FRA is establishing a 60-day comment period in order to permit interested parties an opportunity to respond to the petitions for reconsideration related to Docket No. FRA–2008–0059, Notice No. 4. The petitions for reconsideration are available for review in the docket for this rulemaking, and have been assigned identification numbers of FRA–2008–0059–0031 and FRA–2008–0059–0032. FRA's response to the petitions for reconsideration and any comments received on these petitions will be published under a new RIN number (2130–AC37), but will be filed in the same docket.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects in 49 CFR Part 214

Occupational safety and health, Penalties, Railroad safety.

The Final Rule

In consideration of the foregoing, FRA delays the effective date of the final rule until July 1, 2013.

Issued in Washington, DC, on March 2, 2012.

Karen J. Hedlund,

Deputy Administrator.

[FR Doc. 2012–5667 Filed 3–7–12; 8:45 am]

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Proposed Rules

Federal Register
Vol. 77, No. 46
Thursday, March 8, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Part 15

Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Proposed final guidance.

SUMMARY: The United States Department of Agriculture (USDA) is publishing the proposed guidance on the Title VI prohibition against national origin discrimination as it affects limited English proficient persons. Consistent with Title VI of the Civil Rights Act of 1964, as amended, Title VI regulations, and Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency (LEP),'' the guidance clarifies the obligations of entities that receive Federal financial assistance from USDA. The guidance does not create new obligations, but rather, provides guidance for USDA recipients in meeting their existing obligations to provide meaningful access for LEP persons.

DATES: Comments must be received in writing on or before May 7, 2012.

ADDRESSES: Written comments via letter and facsimile are invited from interested persons and organizations. Comments should be sent to Kenneth Baisden, Chief, Policy Division, or Anna G. Stroman, Team Leader, Policy Division, 300 7th Street SW., Washington, DC 20250, Fax: (202) 690–2345. Comments may also be submitted by email at *Kenneth.Baisden@ascr.usda.gov* or *Anna.Stroman@ascr.usda.gov.*

FOR FURTHER INFORMATION CONTACT: This document is available for review on the USDA web site at *www.usda.gov/da/cr.html.* Arrangements to receive this guidance in an alternative format may be made by calling (202) 205–5953 or TTY at 1 (800) 877–8642 or (202) 720–2600. Upon request, USDA will supply appropriate aids, such as readers or print magnifiers, to persons with disabilities who need assistance to review the comments or other documents in the public record for this guidance.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–2000d–6, and the USDA implementing regulations at 7 CFR part 15, Subpart A, ''Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture Effectuation of Title VI of the Civil Rights Act of 1964,'' provide that no person shall be discriminated against on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof. The purpose of this guidance is to clarify the responsibilities of recipients and sub-recipients (recipients) who receive financial assistance from USDA and to assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act of 1964, as amended, and the implementing regulations. This guidance does not impose any new requirements, but reiterates longstanding Title VI and regulatory principles and clarifies USDA's position that in order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress entitled, ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients, which was drafted and organized to function as a model for similar guidance by other Federal agencies. See 67 FR 41455 (June 18, 2002). Consistent with this directive, USDA has developed this proposed guidance, which is designed to reflect the application of the DOJ Guidance standards to the programs and activities of USDA recipients.

This guidance sets out the policies, procedures, and steps that USDA recipients can take to ensure that LEP persons have meaningful access to federally assisted programs and activities and provides examples of policies and practices that USDA may find violative of Title VI and Title VI regulations.

It also sets out the general parameters for recipients in providing translations of written materials, provides examples that illustrate the importance of such translations, and describes the flexibility that recipients have in meeting this obligation. For recipients who desire greater specificity regarding written translations for LEP persons, the guidance contains population thresholds. Use of these population thresholds is not mandatory. The guidance explicitly states that the failure to meet these population thresholds will not result in a finding of noncompliance, but that USDA will review a number of other factors in determining compliance.

The guidance also describes some of the methods recipients can use to meet their obligation to provide, under certain circumstances, competent oral interpretative services to LEP persons. It has been determined that this guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act.

Background

Most people living in the United States read, write, speak, and understand English. There are many people, however, for whom English is not their primary language. For instance, based on the 2000 Census, over 26 million individuals speak Spanish, over 10 million speak Indo-European languages,[1] and almost 7 million speak an Asian or Pacific Island language at home. If these people have

[1] Other Indo-European languages include most languages of Europe and the Indic languages of India, such as German, Yiddish, Dutch, Swedish, Norwegian, French, Italian, Portuguese, Russian, Polish, Serbo-Croatian, Hindi, Guajarati, Punjabi, Urdu, Greek, Baltic and Iranian languages.

a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' According to the 2000 Census data, 28.3 percent of all Spanish speakers, 27.2 percent of all Russian speakers, 28.2 percent of all Chinese speakers, and 32.4 percent of all Vietnamese speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 2000 Census.[2]

Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that are accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help people learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs along with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. The fact that ESL classes are made available, however, does not obviate the statutory and regulatory requirements to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[3]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[4] These are the same criteria USDA has been using and will continue to use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Under Executive Order 13166, DOJ is responsible for providing LEP Guidance to all Federal agencies and for ensuring consistency among the agency-specific guidance documents issued by Federal agencies. Consistency among the agency-specific guidance documents issued by Federal agencies is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofits that receive Federal financial assistance.

There are many productive steps the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller potential recipients may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, USDA plans to continue to provide assistance and guidance in this important area. In addition, USDA plans to work with potential and actual recipients, other Federal agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches.

Moreover, USDA intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, local governments, and small nonprofit organizations. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, other Federal agencies, and the communities being served.

Some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. We have taken the position that this is not the case and will continue to do so. Accordingly, we will strive to ensure that federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

I. Legal Authority.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, states:

> No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] by issuing rules, regulations, or orders of general applicability'' 42 U.S.C. 2000d–1.

In addition to Title VI, some USDA recipients must implement a statutory provision of the Food Stamp Act of 1977, 7 U.S.C. 2011 et seq., which requires them to use appropriate bilingual personnel and printed materials in the administration of the Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program, in areas where a substantial number of potentially eligible households speak a language other than English. The Food Stamp Act also requires recipients to establish procedures governing the operation of SNAP offices that best serve households in each State, including households in

[2] Other languages include Hungarian, Arabic, Hebrew, languages of Africa, native North American languages, including the American Indian, Alaska native languages, and some indigenous languages of Central and South America.

[3] USDA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[4] The policy guidance is not a regulation but rather a guide. Title VI and implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for persons who are limited English proficient.

areas where a substantial number of potentially eligible households speak a language other than English.

USDA regulations at 7 CFR 15.3b(1)–(2) provide in part:

(1) A recipient under any program to which the regulations in this part apply may not, directly or through contractual or other arrangements on the ground of race, color, or national origin:

(i.) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii.) Provide any service, financial aid, or other benefit, to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii.) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv.) Restrict an individual in any way in the enjoyment of any advantage or privilege, enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v.) Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition that individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi.) Deny an individual an opportunity to participate in the program through the provisions of services or otherwise or afford him or her an opportunity to do so that is different from that afforded others under the program; or

(vii.) Deny a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits or facilities that will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects to individuals of a particular race, color, or national origin.

In addition, USDA regulations implementing the Food Stamp Act of 1977, published at 7 CFR 15.3(6)(i)–(ii), provide in part:

> Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters * * *.

In *Lau* v. *Nichols,* 414 U.S. 563 (1974), the Supreme Court interpreted regulations promulgated by the former Department of Health, Education, and Welfare, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau,* a San Francisco school district, which had a significant number of non-English speaking students of Chinese origin, was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' was issued; 65 FR 50121 (August 16, 2000). Under that Order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for their recipients pursuant to the Executive Order, ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination against Persons with Limited English Proficiency'' 65 FR 50123 (August 16, 2000), (DOJ LEP Guidance).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval.*[5] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

This guidance clarifies the responsibilities of recipients and will assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act of 1964, as amended, and Title VI regulations. It is consistent with Executive Order 13166 and DOJ LEP guidance. To avoid discrimination against LEP persons on the ground of national origin, USDA recipients should take reasonable steps to ensure that such persons receive the language assistance necessary to afford them meaningful access to recipient programs or activities, free of charge.

II. Who is covered?

USDA regulations require all recipients of Federal financial assistance from USDA to provide meaningful access to LEP persons.[6] Federal financial assistance includes grants, below-market loans, training, and use of equipment, donations of surplus

[5] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, *e.g., Sandoval,* 532 U.S. at 286, 286 n.6 (''[We] assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are inspired by, at the service of, and inseparably intertwined with § 601, when § 601 permits the very behavior that the regulations forbid.'') The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own implementing regulations.

[6] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to USDA federally conducted programs and activities.

property, and other assistance. Covered entities include, but are not limited to:

- State and County agencies, offices, and their subdivisions;
- Private vendors, agents, contractors, associations, and corporations;
- Colleges, universities, and elementary and secondary schools;
- County, district, and regional committees/councils;
- Nursing homes, summer camps, food banks, and housing authorities;
- Research and promotion boards; and
- Other entities receiving, directly or indirectly, Federal financial assistance provided by USDA.

Sub-recipients likewise are covered when Federal funds are passed through from a recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations.[7] This is true even if only one part of the recipient receives the Federal financial assistance.[8] For example, USDA provides assistance to a University's outreach department to provide business development services to local farmers and ranchers. In such a case, all operations of the University—not just those of the University's outreach department—are covered.

Some recipients operate in jurisdictions in which English has been declared the official language. These recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of federally assisted services and benefits to persons with limited English proficiency.[9]

III. Who is a limited english proficient person?

Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' and entitled to language assistance with respect to a particular type of benefit, service, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by USDA recipients and should be considered when planning language services include, but are not limited to, for example:

- Persons seeking access to or needing assistance to obtain SNAP benefits or other food assistance from a recipient;
- Persons seeking information, seeking to enforce rights, or seeking benefits or services from recipient State and County agencies, offices, and their subdivision;
- Persons encountering recipient private vendors, agents, contractors, associations, and corporations;
- Students, community members, and others encountering recipient extension programs, colleges, universities, and elementary and secondary schools;
- Persons seeking to participate in public meetings or otherwise participate in the activities of county, district, and regional committees/councils;
- Persons seeking access to, or services, or information from, nursing homes, summer camps, food banks, and housing authorities;
- Persons subject to the work of research and promotion boards;
- Persons encountering other entities or persons who receive, directly or indirectly, Federal financial assistance provided by USDA; and
- Parents and family members of the above.

IV. How does a recipient determine the extent of its obligation to provide LEP services?

In order to ensure compliance with Title VI and Title VI regulations, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs and activities. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

I. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;

II. The frequency with which LEP persons come in contact with the program or activity;

III. The nature and importance of the program, activity, or service to people's lives; and

IV. The resources available to the recipient, and costs.

As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while avoiding undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus might require more in the way of language assistance. However, the flexibility that recipients have to address the needs of the LEP populations they serve does not diminish and should not be used to minimize their obligation to address those needs. USDA recipients should apply the following four factors to the various kinds of contacts with the public to assess language needs and decide which reasonable steps should be taken to ensure meaningful access for LEP persons.

I. The Number or Proportion of LEP Persons Eligible To Be Served or Likely To Be Encountered Within the Area Serviced by the Recipient

One factor in determining which language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of LEP persons within the eligible service population, the more likely language services are needed.

Ordinarily, persons ''eligible to be served or likely to be directly affected by'' a recipient's program or activities are those who are served or encountered in the eligible service population. The eligible service population is program/activity-specific and includes persons who are in the recipient's geographic service area as established by USDA, State or local authorities, or the recipient, as appropriate, provided that those designations do not themselves discriminatorily exclude certain populations. For instance, if a statewide conservation district serves a large LEP population within a particular county, the appropriate service area will be the county, and not the entire population eligible to participate in the program or activity within the State. Below are additional examples of how USDA would determine the relevant service areas when assessing who is eligible to be served or likely to be directly affected.

Example A: A complaint filed with USDA alleges that a local SNAP certification office

[7] What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA provides that, in most cases, when a recipient receives Federal Financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program or activity that uses the federal assistance.

[8] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated (42 U.S.C. 2000d–1).

[9] Recipients should also be mindful of their responsibilities under the Americans with Disabilities Act of 1990 and § 504 of the Rehabilitation Act of 1973 in meeting their obligation to ensure access to LEP individuals with disabilities.

discriminates against Hispanic and Chinese LEP applicants by failing to provide such persons with language assistance in connection with its programs and activities, including written translations. The certification office identifies its service area as the geographic area identified in its plan of operations. USDA determines that a substantial number of the recipient's food stamp applicants and beneficiaries are drawn from the area identified in the plan of operations and that no area with concentrations of racial, ethnic, or other minorities is discriminatorily excluded from the plan. USDA is likely to accept the area identified in the plan of operations as the relevant service area.

Example B: A privately owned limited-profit housing corporation enters into an agreement with USDA to provide low-income rural rental housing that will serve beneficiaries in three counties. The agreement is reviewed and approved by USDA. In determining the persons eligible to be served or likely to be affected, the relevant service area would generally be that designated in the agreement. However, if one of the counties has a significant population of LEP persons and the others do not, consideration of that particular county as a service population for purposes of determining the proportion of LEP persons in the population served by that portion of the recipient's program or activity would be appropriate.

When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter or participate in a portion of a recipient's program or activity.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers.

Other data should be consulted to refine or validate a recipient's prior experience, including the latest Census data for the area served, data from school and from community organizations, and data from State and local governments.[10] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

II. The Frequency With Which LEP Persons Come in Contact With the Program or Activity

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP persons from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves LEP persons on a one-time basis will be very different from those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contact with Spanish-speaking people who are LEP might require certain assistance in Spanish. Less frequent contact with different language groups might suggest a different and less intensified solution. If an LEP person accesses a program or service on a daily basis, a recipient has greater duties than if the same person's program or activity contact is unpredictable or infrequent. However, even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP person seeks services under the program in question. This plan need not be intricate; it can be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

III. The Nature and Importance of the Program, Activity or Service

The more important the information, service, or benefit provided in a program or activity, or the greater the possible consequences of the contact to LEP persons, the more likely language services are needed. For instance, in determining importance, the obligation to communicate information on the availability of emergency food assistance in a designated disaster area might differ significantly from the obligation to communicate information on the opportunity to attend a one-time free luncheon at a community recreation center. A recipient needs to determine whether denial or delay of access to services, benefits or information could have serious or even life-threatening implications for an LEP person. For example, the failure to translate consent forms and applications for important benefits or services could have serious or life-threatening implications for LEP persons in need of food, shelter, emergency services, and many other important benefits. Also, a recipient needs to determine if the media used to publicize a benefit or service, or a delay in providing information on a program, service, or benefit might have serious, negative implications for LEP persons. Further, decisions by a Federal, State, or local entity, or by the recipient, to make an activity compulsory, such as educational programs and notifications of the right to a hearing or appeal can serve as strong evidence of the program's importance.

IV. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as those with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal agencies; and reasonable business practices. Where appropriate, the following might help reduce costs: Training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, or centralizing interpreter and translator services to achieve economies of scale; the formalized use of qualified community volunteers can also help reduce costs.[11]

[10] The focus of the analysis is on the lack of English proficiency, not the ability to speak more than one language. Note that demographic data might indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English might be spoken by people who are also overwhelmingly proficient in English. Thus, they might not be the languages spoken most frequently by limited English proficient persons. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

[11] Small recipients with limited resources might find that entering into a bulk telephonic

Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance. Such recipients might find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

The four-factor analysis necessarily implicates the ''mix'' of appropriate LEP services. Recipients have two main ways to provide language services: (1) Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and (2) written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to commercially available telephonic interpretation services that are accessed by a high volume of LEP persons. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis, while in others, the LEP person may be referred to another recipient office for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, social service recipients having a service area with a significant Hispanic LEP population might need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many social services have already made such arrangements.) In contrast, there might be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services might be high—such as in the case of a voluntary general public tour of a recreational facility—in which pre-arranged language services for the particular service might not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to LEP persons and to recipients.

interpretation service contract will prove cost effective.

Recipients have substantial flexibility in determining the appropriate mix.

V. Selecting Language Assistance Services

Recipients have two main ways to provide language assistance to LEP persons—oral interpretation and written translations. Quality and accuracy of the language service is critical in order to avoid serious consequences to LEP persons and to recipients.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Assessment of competency involves more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, might be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they might not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts particular to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person who is being assisted; [12]
- Understand and follow confidentiality and impartiality rules to the same extent as the recipient for whom he or she is interpreting; and
- Understand and adhere to their role as interpreters, without deviating into a role as counselor, advisor, or other inappropriate roles.

Some recipients might have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly where ambiguous, incomplete, or inaccurate information can result in the denial or reduction of services or benefits, the use of certified interpreters is strongly encouraged.[13] Where such proceedings are lengthy, the interpreter will likely need breaks, and team interpreting might be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of appropriate LEP services. The quality and accuracy of language services in a hearing regarding the reduction of benefits, for example, must be extraordinarily high, while the quality and accuracy of language services in a voluntary recreational program might not need to meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be effective, language assistance should be timely. While there is no single definition for ''timely'' that is applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service or benefit at issue or the imposition of an undue burden on or delay in the provision of important information rights, benefits, or services to the LEP person. For example, when the timelines of information, benefits, or services is important, such as with certain activities related to various types of emergency assistance by way of nutrition or housing services, or emergency loans, grants, etc., a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to

[12] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that night be understood to mean something in Spanish for someone from Cuba might not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of some programmatic terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue, and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language so that these terms can be used again, when appropriate.

[13] For those languages in which no formal accreditation or certification exist, recipients should consider a formal process for establishing the credentials of the interpreter.

provide language assistance. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to information, services, or benefits is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical options. Recipients can, for example, fill public contact positions, such as receptionists, secretaries, program specialists, and/or program aides, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staffs are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee might conflict with the role of an interpreter (for instance, a bilingual program specialist would probably not be able to perform effectively the role of an interpreter in a benefits hearing and also carry out his or her duties to administer requirements of the program or activity at the same time, even if the program specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staffs are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters can be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters can be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with interpreters and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They can be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program or activity that might be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the documents prior to the discussion and any logistical problems that should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers working with, for instance, community-based organizations can provide a cost-effective supplemental language assistance strategy under appropriate circumstances. These types of volunteers can be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information, services, or benefits of the program or activity and who can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and be knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and help ensure that services are readily available.

Use of Family Members, Friends, or Others as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other person of their choosing) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other person acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, friends, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service, or activity, including protection of the recipient's own administrative or regulatory interest in accurate interpretation.

In many circumstances, family members (especially children), friends, or others identified by LEP persons, are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing family, medical, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For USDA recipient programs and activities, this is particularly true in an administrative hearing or in situations in which health, safety, or access to sustenance or important benefits and services are at stake, or when credibility and accuracy are important to protect an LEP person's rights or access to important benefits and services. An example of such a case is when an LEP recipient applies for food stamps or a low-interest farm loan. The recipient should not rely on friends or family members of the LEP recipient or other informal interpreters.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other informal interpreters often make their use inappropriate, their use as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary tour of a recipient's farmland offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information are critical for, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters.

The recipient should ensure that the LEP person's choice is voluntary, the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that the recipient could provide a competent interpreter at no cost (to the LEP person).

Written Language Services (Translation). Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, but are not limited to:

—Applications to participate in a recipient's program or activity or to receive recipient benefits or services;
—Consent forms, complaint forms, intake forms, letters containing important information related to participation (such as cover letters outlining conditions of participation in a loan program or committee election);
—Written notices pertaining to eligibility requirements, rights, losses, denials, decreases in benefits or services, foreclosures, or terminations of services or benefits and/or the right to appeal such actions;
—Notices advising LEP persons of the availability of free language assistance;
—Written tests that do not assess English language proficiency, but test competency for a particular license, job, or skill for which knowing English is not required;
—Outreach materials; and
—Any documents that require a response from applicants, beneficiaries, and other participants.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program or activity, information, encounter, service, or benefit involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for voluntary credit management courses should not generally be considered vital (so long as they are not a prerequisite to obtaining or maintaining better credit), whereas, applications for rural rental housing would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exist may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents Be Translated? The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor

analysis. Because translation is a one-time expense, consideration should be given to whether the up-front costs of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' which means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of a recipient's program or activity, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Provisions. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

a. The USDA recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents if needed, can be provided orally; or

b. If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These Safe Harbor Provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. For example, recipients should, where appropriate, ensure that program rules have been explained to LEP program participants prior to taking adverse action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators, though certification or accreditation may not always be possible or necessary.[14] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Recipients should ensure that translators understand the expected reading level of their audiences and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[15] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, or technical concepts helps avoid confusion by LEP persons and may reduce costs. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services. For instance, documents that are simple and have no legal or other negative consequence for LEP persons may be translated by individuals who are less skilled than those who translate documents with legal or other important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VI. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain USDA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan.

[14] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[15] For instance, there may be languages that do not have an appropriate direct translation of some program-specific terms of art or technical concepts and the translator should be able to provide an appropriate translation. The translator also should likely make the recipient aware of this. Recipients can work with translators to develop a consistent and appropriate set of descriptions of these terms. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans:

(1) Identifying LEP Persons Who Need Language Assistance

The first two factors in the four-factor analysis are an assessment of the number of proportion of LEP persons eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

—Types of language services available;
—How staff can obtain those services;
—How to respond to LEP callers;
—How to respond to written communications from LEP persons;
—How to respond to LEP persons who have in-person contact with recipient staff; and
—How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

—Staff know about LEP policies and procedures; and
—Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors that it will provide language services, it is important to let LEP persons know that those services are available and they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:

—Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to important programs, activities, services, or benefits provided by USDA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the language help; [16]
—Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and ''tagged'' onto the front of common documents;
—Working with community-based organizations and other stakeholders to inform LEP persons of the recipients' services, including the availability of language assistance services;
—Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them;
—Including notices in local newspapers in languages other than English. Providing notices on non-English-language radio and television stations about the available language assistance services and benefits and how to get them; and
—Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, activities, services, and benefits need to be made accessible for LEP persons, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in service area or population affected or encountered;
—Frequency of encounters with LEP language groups;
—Nature and importance of activities to LEP persons;
—Availability of resources, including technological advances and sources of

[16] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm.* These signs could, for example, be modified for recipient use.

additional resources, and the costs imposed;
—Whether existing assistance is meeting the needs of LEP persons;
—Whether staff know and understand the LEP plan and how to implement it; and
—Whether identified sources for assistance are still available and viable.

In addition to the five elements above, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by USDA through its regulations at 7 CFR part 15, Departmental Regulation 4330–2, ''Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA,'' and Departmental Manual 4330–1, ''Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Assisted Programs and Activities.'' These documents contain USDA requirements and procedures for discrimination complaints processing, complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

USDA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, USDA will inform the recipient in writing of this determination, including the basis for the determination. USDA uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, USDA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means, if necessary. If the matter cannot be resolved informally, USDA must secure compliance through the termination of Federal assistance after the USDA recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ to seek injunctive relief or pursue other enforcement proceedings. USDA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, USDA proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, USDA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, USDA acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, USDA will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups might reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, USDA recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to programs or activities having a significant impact on important benefits, and services, are addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

VIII. Effect on State and Local Laws

Some State and local laws might identify language access obligations/requirements. Recipients might meet these obligations, as long as they do not conflict with or set a lower standard than is required under Title VI and Title VI regulations. Finally, as noted above, some recipients operate in a jurisdiction in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally assisted benefits and services to persons with limited English proficiency.

Dated: January 30, 2012.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2012–4377 Filed 3–7–12; 8:45 am]

BILLING CODE 3410–9R–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

RIN 0551–AA70

Export Sales Reporting Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add reporting for pork (fresh, chilled, and frozen box/primal cuts) and distillers dried grain (DDG) to the Export Sales Reporting Requirements. Under this proposed rule, all exporters of U.S. pork and DDG would be required to report on a weekly basis, information on the export sales of pork and DDGs to the Foreign Agricultural Service (FAS).

DATES: Submit comments on or before May 7, 2012.

ADDRESSES: Address all comments concerning this proposed rule to Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov;* or by telephone at (202) 720–3274; or fax to (202) 720–0876. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov;* or by telephone on (202) 720–3274; or by fax (202) 720–0876.

SUPPLEMENTARY INFORMATION:

Background

In 1973, Congress mandated an export sales reporting requirement to ensure that all parties involved in the production and export of U.S. grain

have access to up-to-date export information. This mandate was the result of huge, unanticipated, Soviet purchases in 1972 of U.S. wheat and corn that produced a sizable run-up in U.S. food prices and depleted U.S. reserve stocks. There was concern that large grain companies had an advantage in this situation because they had more information than the public on future prices and grain trade trends. Prior to the establishment of the export sales reporting system, it was difficult for the public to obtain information on exports until such commodities were actually shipped.

The statutory authority for the Export Sales Reporting Requirements, section 602 of the Agricultural Trade Act of 1978, provides for the reporting of wheat and wheat flour, feed grains, oil seeds, cotton, pork, beef and products thereof, and other commodities that the Secretary of Agriculture (the Secretary) may designate.

This proposed rule would add reporting for pork (fresh, chilled, and frozen box/primal cuts) and DDGs to the Export Sales Reporting Requirements. Under this proposed rule, all exporters of U.S. pork and DDGs would be required to report weekly information with respect to the export sales of pork and DDGs to the Export Sales Reporting Branch, Office of Trade Programs, FAS, United States Department of Agriculture (USDA). Required reportable information includes the quantity, destination, and marketing year of all pork and DDG export sales, changes in sales, and shipments per parameters identified in Appendix 1. A summary of the ''U.S. Export Sales'' report is published on FAS' Web site at *http://www.fas.usda.gov/export-sales/esrd1.html,* each Thursday at 8:30 a.m., Eastern Time. This change would not alter the current reporting schedule and would be undertaken using existing staff at no additional cost to the agency.

Adding pork and DDG to the Export Sales Reporting Requirements would provide an early indicator of export sales levels for U.S. pork and DDG, thus improving market transparency and enabling commodity markets to better adjust to changing export activity. This proposed rule would allow for information on the total volume of sales and shipments to be available within 2 weeks of the export sale and shipment, rather than the nearly 2-month delay experienced under the current system operated by the U.S. Bureau of the Census, which only reports actual exports.

Executive Order 12866

The proposed rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on small businesses.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with state and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on state and local processes for state and local government coordination and review of proposed federal financial assistance and direct federal development. This rule neither provides federal financial assistance nor direct federal development; it does not provide either grants or cooperative agreements. Therefore this program is not subject to Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have a preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this proposed rule, all administrative remedies must be exhausted.

Executive Order 13132

The policies contained in this rule would not have any substantial direct effect on 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. Nor would this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt tribal laws. The policies contained in this rule do not preempt Tribal law.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

Unfunded Mandates Reform Act (Pub. L. 104–4)

Public Law 104–4 requires consultation with state and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these requirements are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Secretary is requesting comments from all interested individuals and organizations on a proposed revision to the currently approved information collection for this program. This revision includes the proposed change in information collection activities related to the regulatory changes in this proposed rule.

Comment Date

Comments on this information collection must be received by May 7, 2012 to be assured of consideration.

Additional Information or Comments

Peter W. Burr, Office of Trade Programs/Import Policies and Export Reporting Division/Export Sales Reporting Branch, FAS, USDA, 1400 Independence Avenue, Stop 1025, SW., Washington, DC 20520–1025; or by email at: *esr@fas.usda.gov;* or to the Desk Officer for Agriculture, Office of

Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Title: Export Sales (Reporting Program) of U.S. Agricultural Commodities.

OMB Number: 0551–0007.

Expiration Date of Approval: January 31, 2014.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 602 of the Agricultural Trade Act of 1978, as amended, (7 U.S.C. 5712) requires the reporting of information pertaining to contracts for export sale of certain specified agricultural commodities and other commodities that may be designated by the Secretary. The Secretary of Agriculture has the authority to add other commodities to this list. This proposed rule would add reporting for pork and DDGs to the Export Sales Reporting Requirements. Regulations at 7 CFR part 20 implement the reporting requirements, and prescribe a system for reporting information pertaining to contracts for export sales.

USDA's Export Sales Reporting System was created after the large unexpected purchase of U.S. wheat and corn by the Soviet Union in 1972. To make sure that all parties involved in the production and export of U.S. grain have access to up-to-date export information, the U.S. Congress mandated an export sales reporting requirement in 1973. Prior to the establishment of the Export Sales Reporting System, it was difficult for the public to obtain information on export sales activity until the actual shipments had taken place.

Estimate of Burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated to be 30 minutes.

Respondents: All exporters of wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef, pork, and any products thereof, and other commodities that the Secretary may designate as produced in the United States.

Estimated number of respondents: 360.

Estimated Number of Responses per Respondent: 252.37.

Estimated Total Annual Burden on Respondents: 45,427.

Requests for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Persons with disabilities who require an alternative means of communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

E-Government Act Compliance

FAS is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 20

Agricultural commodities, Exports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR part 20 is proposed to be amended as follows:

PART 20—EXPORT SALES REPORTING REQUIREMENTS

1. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 5712.

2. Section 20.4 is amended by revising paragraph (c) to read as follows:

§ 20.4 Definitions.

* * * * *

(c) *Commodity.* Wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef, pork, and any products thereof, and any other agricultural commodity the Secretary may designate. ''Commodity'' shall also mean a commodity having identifying characteristics as described in any announcement issued pursuant to § 20.5 such as class(es) of wheat and rice, or staple length(s) of cotton. Mixed wheat shall be considered to be the predominant wheat class of the blend. This definition excludes commodities to be used for seed which have been treated in such a manner that their use is limited to seed for planting purposes or on which a certificate has been issued by a recognized seed testing laboratory setting forth variety, germination, and purity.

* * * * *

3. Appendix 1 to part 20 is revised to read as follows:

Appendix 1 to Part 20—Commodities Subject to Reporting, Units of Measure to be Used in Reporting, and Beginning and Ending Dates of Marketing Years

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Wheat—Hard red winter	Metric Tons	June 1	May 31.
Wheat—Soft red winter	Metric Tons	June 1	May 31.
Wheat—Hard red Spring	Metric Tons	June 1	May 31.
Wheat—White (incl. Hard and soft white)	Metric Tons	June 1	May 31.
Wheat—Durum	Metric Tons	June 1	May 31.
Wheat—Products—All wheat flours (including clears) bulgur, semolina, farina, and rolled, cracked and crushed wheat.	Metric Tons	June 1	May 31.
Barley—Unmilled (including feed and hull-less waxy barley)	Metric Tons	June 1	May 31.
Corn—Unmilled (including waxy, cracked—if 50% whole kernels)	Metric Tons	Sept. 1	Aug. 31.
Distillers Dried Grain	Metric Tons	Sept. 1	Aug. 31.
Rye—Unmilled	Metric Tons	June 1	May 31.
Oats—Unmilled	Metric Tons	June 1	May 31.
Grain Sorghum—Unmilled	Metric Tons	Sept. 1	Aug. 31.
Soybeans	Metric Tons	Sept. 1	Aug. 31.
Soybean Cake and Meal	Metric Tons	Oct. 1	Sept. 30.

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Soybean Oil—including: Crude (including degummed), once refined, soybean salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydro-genated, packaged oil.	Metric Tons	Oct. 1	Sept. 30.
Flaxseed	Metric Tons	June 1	May 31.
Linseed Oil—including raw, boiled	Metric Tons	June 1	May 31.
Cottonseed	Metric Tons	Aug. 1	July 31.
Cottonseed Cake and Meal	Metric Tons	Oct. 1	Sept. 30.
Cottonseed Oil—including crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydro-genated.	Metric Tons	Oct. 1	Sept. 30.
Sunflowerseed Oil—crude, once refined, sunflowerseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydro-genated.	Metric Tons	Oct. 1	Sept. 30.
Cotton—American Pima—Raw, extra long staple	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length 1 1/16 inches and over	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length 1 inch up to 1 1/16 inches	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length under 1 inch	Running Bales	Aug. 1	July 31.
Rice—Long grain, rough (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, rough (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Long grain, brown (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, brown (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Long grain, milled (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—Medium, short and other classes, milled (including parboiled, brewer's rice).	Metric Tons	Aug. 1	July 31.
Cattle Hides and Skins—Whole cattle hides, (excluding wet blues)	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole calf skins (excluding wet blues)	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole kip skins, (excluding wet blues)	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Cattle, calf, and kip cut into croupons, crops, dossets, sides, butts and butt bend (hide equivalent) (excluding wet blues).	Number	Jan. 1	Dec. 31.
Cattle Hides and Skins—Cattle, calf and kip, in cuts not otherwise specified; pickled/limed (excluding wet blues).	Pounds	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—unsplit (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—grain splits (whole or sided) hide equivalent	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—splits, (excluding grain splits)	Pounds	Jan. 1	Dec. 31.
Beef—fresh, chilled or frozen muscle cuts/whether or not boxed	Metric tons	Jan. 1	Dec. 31.
Pork—fresh, chilled or frozen muscle cuts/whether or not boxed	Metric tons	Jan. 1	Dec. 31.

Dated: January 10, 2012.

Suzanne E. Heinen,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2012–5486 Filed 3–7–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0221; Directorate Identifier 2010–SW–082–AD]

RIN 2120–AA64

Airworthiness Directives; Spectrolab Nightsun XP Searchlight

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for a certain Spectrolab Nightsun XP Searchlight Assembly (searchlight) installed on, but not limited to, Agusta S.p.A. (Agusta) Model AB139 and Model AW139 helicopters, Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, and Eurocopter Deutschland GmbH (Eurocopter) Model EC135 and Model MBB–BK 117 C–2 helicopters. This proposed AD would require, before further flight, inserting information into the Normal Procedures section of the Rotorcraft Flight Manual (RFM), a daily check of the searchlight, and at a specified time interval or if you find certain conditions, modifying any affected searchlight gimbal assembly. This proposed AD is prompted by a report of a searchlight vibrating and an investigation that revealed that the gimbal azimuth top nut was loose. A loose nut, if not detected and corrected, could result in a gap between the rubber edging of the top shroud and the gimbal frame, leading to degredation of pointing accuracy and stability performance of the searchlight, and excessive vibration. If the nut were to entirely disengage, the searchlight could disconnect partially or totally from the helicopter, resulting in damage to the helicopter and injury to persons on the ground.

DATES: We must receive comments on this proposed AD by May 7, 2012.

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

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

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any

comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Spectrolab, Inc. ATTN: Saul Vargas, 12500 Gladstone Ave., Sylmar, CA 91342, telephone (818) 365–4611, fax (818) 361–5102, or on the internet at *http://www.spectrolab.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Manager, Safety Management Group, DOT/FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5126; fax: (817) 222–5961; email: *jim.grigg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No.: 2010–0237R2, dated December 14, 2010, to correct an unsafe condition for the Spectrolab Nightsun XP Searchlights installed on the following model helicopters: Agusta AB139 and AW139, Sikorsky S–92A, and Eurocopter MBB–BK 117 C2 and EC 135 series, if equipped with Spectrolab Nightsun XP Gimbal Assembly part number (P/N) 033295 series, used on Spectrolab Nightsun XP Searchlight Assembly System P/Ns 033338 series. EASA advises that a maintenance organization reported an incident where vibration was associated with the Spectrolab Nightsun XP Searchlight. EASA states in its AD that an investigation revealed the Gimbal Azimuth Top Hex Nut was loose. This condition, if not detected and corrected, could lead to a gap between the rubber edging of the top shroud and the Gimbal frame, resulting in degredation of pointing accuracy and stability performance, and pose excessive vibration. If the nut were to entirely disengage, the Searchlight/Gimbal could disconnect from the helicopter and remain attached solely by the internal cable harness or separate totally, resulting in damage to the helicopter or injury to persons on the ground.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Related Service Information

Spectrolab has issued Nightsun XP Searchlight Safety and Service Bulletin #SL 0810–01, Amendment #2, dated September 24, 2010 (SB), which describes a design change that incorporates two positive locking mechanisms: a torque value and safety wire applied to the nut. These locking mechanisms prevent the gimbal azimuth top nut from loosening and allowing the center shaft to rotate out. The following table lists the Nightsun systems containing one of these gimbal assemblies by P/N and revision:

AFFECTED SYSTEMS AND P/N

System P/N	Nomenclature	Affected revisions
033338	Nightsun XP Searchlight System	A through D.
033338–3	Nightsun XP Searchlight System	A through D.
033338–4	Nightsun XP Searchlight System	A through D.
033704	IFCO Nightsun XP Searchlight System	A through C.
033704–1	IFCO Nightsun XP Searchlight System	A through C.

Spectrolab has also issued Nightsun XP Searchlight System Kit and Procedure to Incorporate EASA AD 2010–0183 Conformance, 034374 Revision NC, approved September 28, 2010 (Kit and Procedure). Once modified in accordance with the Kit and Procedure, the Nightsun XP gimbals are re-identified with a new nameplate and overlay from a P/N 033295–1 to 033295–3, or P/N 033295–2 to 033295–4.

EASA classified this modification as mandatory and issued EASA AD No.: 2010–0237R2, dated December 14, 2010, to ensure the continued airworthiness of helicopters with the affected system installed.

Proposed AD Requirements

This proposed AD would require:

- Before further flight, inserting a copy of the SB into the Normal Procedures section of the RFM.
- Before the first flight of each day, visually checking the searchlight installation for a gap between the top shroud rubber edging, P/N 033381, and the side covers, P/N 033286, with slight pressure applied to either side of the searchlight. The edging should remain in physical contact with the side covers when slight pressure is applied to the searchlight. If the edging does not remain in contact, the gimbal assembly must be modified and re-identified. An owner/operator (pilot) holding at least a Private Pilot Certificate may perform this visual check and must show compliance by updating the helicopter maintenance records in accordance with 14 CFR 43.9(a)(1)–(4) and 91.417(a)(2)(v).
- Within 100 hours time-in-service (TIS), modify and re-identify the gimbal assembly in accordance with the Kit and Procedure, steps 1 through 13.

Differences Between This Proposed AD and the Service Information

The differences between this AD and the EASA AD are:

• We require modifying and re-identifying the searchlight within 100 hours TIS, while the EASA AD imposes a calendar date for compliance.

• The EASA AD requires contacting the design (change) approval holder if discrepancies are found during the inspection of the searchlight installation, and we do not require this action.

Costs of Compliance

We estimate that this proposed AD would affect 6 helicopters of U.S. registry. We also estimate that it would take minimal time to insert the service bulletin into the RFM, and about 3.0 work hours per helicopter to modify the searchlight. At an average labor rate of $85 per work hour, this amounts to $255 per helicopter. Required parts would cost about $1,000 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $1,255 per helicopter, or $7,530 for the fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Spectrolab Nightsun XP Searchlight: Docket No. FAA–2012–0221; Directorate Identifier 2010–SW–082–AD.

(a) Applicability

This AD applies to Spectrolab Nightsun XP Searchlight Assembly Systems with gimbal assembly part number (P/N) 033295–1 or 033295–2, installed on, but not limited to, Agusta S.p.A. Model AB139 and Model AW139 helicopters, Sikorsky Aircraft Corporation Model S–92A helicopters, and Eurocopter Deutschland GmbH Model EC135 and Model MBB–BK 117 C–2 helicopters, certificated in any category. The searchlight assembly system P/Ns and revision level using one of the two affected gimbal assembly P/Ns are listed in Table 1 of this AD.

TABLE 1—AFFECTED SYSTEMS AND P/N

System P/N	Nomenclature	Affected revisions
033338	Nightsun XP Searchlight System	A through D.
033338–3	Nightsun XP Searchlight System	A through D.
033338–4	Nightsun XP Searchlight System	A through D.
033704	IFCO Nightsun XP Searchlight System	A through C.
033704–1	IFCO Nightsun XP Searchlight System	A through C.

(b) Unsafe Condition

This proposed AD is being issued to prevent the Searchlight/Gimbal from disconnecting from the helicopter and remaining attached soley by the internal cable harness, or separating totally, resulting in damage to the helicopter or injury to people on the ground.

(c) Compliance

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

(d) Required Actions

(1) Before further flight, insert a copy of Nightsun XP Searchlight Safety and Service Bulletin #SL 0810–01, Amendment #2, dated September 24, 2010, into the Normal Procedures section of the Rotorcraft Flight Manual.

(2) Before the first flight of each day, visually check the searchlight installation for a gap between the top shroud rubber edging, P/N 033381, and the side covers, P/N 033286, with slight pressure applied to either side of the searchlight. The edging must remain in physical contact with the side covers when slight pressure is applied to the searchlight.

(3) The actions required by paragraph (d)(2) of this AD may be performed by the owner/operator (pilot) holding at least a Private Pilot Certificate, and must be entered into the helicopter maintenance records in accordance with 14 CFR 43.9(a)(1)–(4) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(4) If the edging does not remain in physical contact with the side cover when slight pressure is applied to the searchlight in accordance with the requirements of paragraph (d)(2) of this AD, before further flight, with an affected Spectrolab Nightsun XP Searchlight assembly system installed,

modify and re-identify the gimbal assembly in accordance with paragraph (d)(5) of this AD.

(5) Within 100 hours time-in-service (TIS), modify and re-identify the gimbal assembly in accordance with Nightsun XP Searchlight System Kit and Procedure to Incorporate EASA AD 2010–0183 Conformance, 034374 Revision NC, approved September 28, 2010, steps 1 through 13.

(6) Accomplishing paragraph (d)(5) of this AD is terminating action for the requirements of this AD.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Jim Grigg, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5126; fax: 817–222–5961; email: *jim.grigg@faa.gov.*

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

(f) Additional Information

For service information identified in this AD, contact Spectrolab, Inc. ATTN: Saul Vargas, 12500 Gladstone Ave., Sylmar, CA 91342, telephone (818) 365–4611, fax (818) 361–5102, or on the internet at *http://www.spectrolab.com.* You may review a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(g) The subject of this AD is addressed in European Aviation Safety Agency AD No.: 2010–0237R2, dated December 14, 2010.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3340, Exterior Lighting.

Issued in Fort Worth, Texas, on February 24, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–5621 Filed 3–7–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157714–06]

RIN 1545–BG43

Determination of Governmental Plan Status; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a correction of notice of public hearing on an advance notice of proposed rulemaking; correction.

SUMMARY: This document corrects a correction to a notice of public hearing on an advance proposed rulemaking (REG–157714–06) that was published in the **Federal Register** on Thursday, March 1, 2012 (77 FR 12514) relating to the determination of governmental plans.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing on an advance notice proposed rulemaking (REG–157714–06) that is the subject of this correction is under section 414(d) of the Internal Revenue Code.

Need for Correction

As published, REG–157714–06, contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to a notice of public hearing on an advance proposed rulemaking (REG–157714–06) which was the subject of FR. Doc. 2012–4905, is corrected as follows:

1. On page 12514, column 1, in the preamble, under the caption ''Background:'', line three, the language ''(REG–133233–08) that is the subject of'' is corrected to read ''(REG–157714–06) that is the subject of''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–5595 Filed 3–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133223–08]

RIN 1545–BI19

Indian Tribal Government Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a correction of notice of public hearing on an advance notice of proposed rulemaking; correction.

SUMMARY: This document corrects a correction to a notice of public hearing on an advance proposed rulemaking (REG–133223–08) that was published in the **Federal Register** on Wednesday, February 29, 2012 (77 FR 12226) relating to Indian tribal government plans.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing on an advance notice proposed rulemaking (REG–133223–08) that is the subject of this correction is under section 414(d) of the Internal Revenue Code.

Need for Correction

As published, REG–133223–08, contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the correction to a notice of public hearing on an advance proposed rulemaking (REG–133223–08) which was the subject of FR. Doc. 2012–4850, is corrected as follows:

1. On page 12226, column 3, in the preamble, under the caption **SUMMARY:**, line three, the language ''proposed rulemaking (REG–133233–08)'' is corrected to read ''proposed rulemaking (REG–133223–08)''

2. On page 12226, column 3, in the preamble, under the paragraph heading ''Background'', line three, the language ''(REG–133233–08) that is the subject of'' is corrected to read ''REG–133223–08) that is the subject of''.

3. On page 12226, column 3, in the preamble, under the paragraph heading ''Correction of Publication'', line three, the language ''proposed rulemaking (REG–133233–08)'' is corrected to read ''proposed rulemaking (REG–133223–08)''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2012–5597 Filed 3–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSH–2011–0183]

RIN No. 1218–AC64

Revising Standards Referenced in the Acetylene Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; withdrawal.

SUMMARY: With this document, OSHA is withdrawing the proposed rule that accompanied its direct-final rule revising the Acetylene Standard for general industry.

DATES: Effective March 8, 2012, the proposed rule published December 5, 2011 (76 FR 75840), is withdrawn.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:* Contact Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical information: Contact Ken Stevanus, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2260; fax: (202) 693–1663.

Copies of this **Federal Register** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, is also available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: On December 5, 2011, OSHA published a direct-final rule to update the incorporated references in its Acetylene Standard for general industry at 29 CFR 1910.102 (76 FR 75782). OSHA also published a companion proposed rule along with the direct-final rule (76 FR 75840). In the direct-final rule, OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the direct-final rule if it received no significant adverse comments on the direct-final rule by January 4, 2012. OSHA received one comment on the direct-final rule by that date, which it determined was not a significant adverse comment. OSHA is publishing a notice announcing this determination and confirming the effective date of the direct-final rule as March 5, 2012. Accordingly, OSHA is not proceeding with the proposed rule, and is withdrawing it from the rulemaking process.

List of Subjects in 29 CFR Part 1910

Acetylene, General industry, Occupational safety and health, Safety.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this document. OSHA is issuing this document pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), 5 U.S.C. 553, Secretary of Labor's Order 1–2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on March 2, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–5585 Filed 3–7–12; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0873; FRL–9643–9]

RIN 2060–AH23

Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; announcement of extension of comment period.

SUMMARY: The EPA is extending the comment period for the proposed rule titled, ''Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources'' that was published in the **Federal Register** on February 14, 2012. The proposed rule accompanied the direct final rule that was also published on February 14, 2012. The 30-day comment period in the proposed rule is scheduled to end on March 15, 2012. The extended comment period will close on April 30, 2012. The EPA is extending the comment period because of a request we received in a timely manner.

DATES: The comment period for the proposed rule published February 14, 2012 (77 FR 8209), is extended. Comments must be received on or before April 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0873 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2010–0873, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* The EPA Docket Center, EPA West 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–OAR–2010–0873. 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 www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document or visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Procedure 3—Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Docket Facility and Public Reading Room are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742, and the telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Ms. Lula H. Melton, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone: (919) 541–0880, email: *morales.roberto@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2010–0873. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this document will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this document will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Dated: March 1, 2012.

Mary Eileen Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012–5642 Filed 3–7–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 46

Thursday, March 8, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0033]

Notice of Availability and Opportunity for Comments (Establishment Guidance for the Selection of a Commercial or Private Microbiological Testing Laboratory)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and opportunity for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of policy guidance for federally inspected establishments in the selection of commercial and private microbiological testing laboratories. FSIS has posted this policy guidance on its Web page *http://www.fsis.usda.gov/Regulations_&_Policies/Compliance_Guides_Index/index.asp#Micro.*

FSIS encourages establishments that prepare meat, poultry, or processed egg products to follow the criteria in the guidelines in selecting commercial or private microbiological testing laboratories and in determining their capability to provide accurate and reliable results. Regulated establishments are required to enter into commerce food products that are safe and not adulterated or misbranded. Establishments that select laboratories that do not apply appropriate testing methods or maintain effective Quality Control or Quality Assurance (QC/QA) practices may not receive reliable or useful test results from the laboratory and run the risk of producing food that is unsafe.

DATES: Written comments may be submitted until May 7, 2012.

ADDRESSES: FSIS invites interested persons to submit comments regarding any aspect of this document, including but not limited to: Content, readability, applicability, and accessibility, and will revise the guidance document as warranted. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, OPPD, RIMD, Docket Unit, Patriots Plaza 3, 1400 Independence Avenue SW., Mail Stop 3782, 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2011–0033. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Evelyne Mbandi, Deputy Director, Risk, Innovations, and Management Division, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 355 E. Street SW., Mail Stop 3782, Washington, DC 20250–3700; email: *evelyne.mbandi@fsis.usda.gov;* phone: (301) 504–0897.

SUPPLEMENTARY INFORMATION:

Background

FSIS is issuing a guidance document to provide criteria to establishments producing meat, poultry, and processed egg products for selecting a commercial or private laboratory to analyze establishments' samples. Regulated establishments are ultimately responsible for the laboratory's testing methodologies and practices performed on their behalf.

An FSIS-regulated establishment may perform microbiological testing for various reasons, including, but not limited to the following: Fulfilling regulatory requirements, supporting on-going verification of the establishment's HACCP plan, supporting decisions made in the establishment's hazard analysis, evaluating the effectiveness of the establishment's sanitation program, or complying with purchase specifications or requirements.

FSIS encourages establishments to use this guidance for selecting commercial or private laboratories and for ensuring that microbiological testing performed on their behalf meets their food safety needs. FSIS also welcomes comment on this compliance guideline, which will be revised as needed.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail

subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices.

Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: March 5, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–5664 Filed 3–7–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 12–2012]

Foreign-Trade Zone 189—Kent, Ottawa, and Muskegon Counties, MI; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Kent-Ottawa-Muskegon Foreign-Trade Zone Authority, grantee of FTZ 189, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 1, 2012.

FTZ 189 was approved by the Board on January 15, 1993 (Board Order 616, 58 FR 6614, 2/1/1993). The current zone project includes the following sites: *Site 1* (8 acres)—44th Street and Clay Avenue, Wyoming, Kent County; *Site 2* (18 acres)—1920 Lakeshore Drive, Muskegon, Muskegon County; *Site 3* (64 acres)—5353 52nd Street, Cascade Township, Kent County; *Site 4* (40 acres)—500 Mart Street, Muskegon, Muskegon County; *Site 5* (5 acres)—449 Howard Avenue, Holland Township, Ottawa County; *Site 6* (80 acres)—48th & Thornapple River Drive, Cascade Township, Kent County; *Site 7* (1.15 acres)—1210 & 1218 East Pontaluna Road, Norton Shores, Muskegon County; *Site 8* (15 acres)—900 Hall Street SW., Grand Rapids, Kent County; and *Site 9* (6 acres)—2900 Dixie Street, Grandville, Kent County.

The grantee's proposed service area under the ASF would be Kent, Ottawa and Muskegon Counties, Michigan, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Grand Rapids Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include all of the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 9 be so exempted. No usage-driven sites are being requested at this time. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 189's authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 7, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 22, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 1, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–5688 Filed 3–7–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–3–2012]

Foreign-Trade Zone 126—Reno, NV; Application for Temporary/Interim Manufacturing Authority, Brightpoint North America L.P. (Cell Phone Kitting and Distribution), Reno, NV

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Economic Development Authority of Western Nevada, grantee of FTZ 126, requesting temporary/interim manufacturing (T/IM) authority within 126 at the Brightpoint North America L.P. (Brightpoint) facility, located in Reno, Nevada. The application was filed on March 2, 2012.

The Brightpoint facility (80 employees, 5.87 acres, 20 million units annual capacity) is located at 1025 Sandhill Road, Reno (Site 23). Under T/IM procedures, the company has requested authority to produce cell phone kits (HTSUS 8517.12, 8517.69, duty free). Foreign components that would be used in production (representing 70–90% of the value of the finished product) include power supplies (8504.40, 8504.50, 8504.90), nicad batteries (8507.80), lithium batteries (8507.30), cellular phone sets (8517.11), video phones (8517.18), base stations (8517.61), voice, data and image regeneration machines (8517.62), microphones (8518.10), answering machines (8519.50), video recorders (8521.10, 8521.90), answering machine and video recorder components (8522.10, 8522.90), transceivers (8525.60), monitors and projectors (8528.41, 8528.49, 8528.51, 8528.59, 8528.71, 8528.72, 8528.73), transceiver, monitor and projector parts and accessories (8529.10, 8529.90), thermionic, cathode and photocathode tubes (8540.11, 8540.12, 8540.20, 8540.40, 8540.50, 8540.60, 8540.71, 8540.72, 8540.79, 8540.81, 8540.89, 8540.91, 8540.99), cables (8544.42), connectors and plugs (8536.69), decals (3919.90), plastic holsters (3926.90), leather carrying cases (4202.31), leather pouches (4202.91), plastic carrying cases (4202.92), leather straps (4205.00), wrist straps (6307.90), key pads with connectors (8537.10), external speaker sets (8518.22), headsets with

microphones (8518.30), and hands-free speaker kits (8518.90). Duty rates for the imported components range from free to 20%. T/IM authority could be granted for a period of up to two years.

FTZ procedures could exempt Brightpoint from customs duty payments on the foreign components used in export production. The company anticipates that up to 10 percent of the plant's shipments could be exported. On its domestic sales, Brightpoint would be able to choose the duty rates during customs entry procedures that apply to cell phone kits (duty free) for the foreign inputs noted above.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is April 9, 2012.

Brightwood has also submitted a request to the FTZ Board for FTZ manufacturing authority beyond a two-year period, which may include additional products and components. It should be noted that the request for extended authority would be docketed separately and would be processed as a distinct proceeding. Any party wishing to submit comments for consideration regarding the request for extended authority would need to submit such comments pursuant to the separate notice that would be published for that request.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: March 2, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–5697 Filed 3–7–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Continuation of Suspended Antidumping Duty Investigation: Uranium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determination by the Department of Commerce (''the Department'') that termination of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (''Suspension Agreement'') would likely lead to continuation or recurrence of dumping and the determination by the International Trade Commission (''ITC'') that termination of the suspended antidumping duty investigation on uranium from the Russian Federation (''Russia'') would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing this notice of continuation of the Suspension Agreement on uranium from Russia.

DATES: *Effective Date:* March 8, 2012.

FOR FURTHER INFORMATION CONTACT: Maureen Price or Sally Gannon, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4271 or (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2011, the ITC instituted, and the Department initiated, a sunset review of the Suspension Agreement, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See ITC Investigation Nos.* 731–TA–539–C (Third Review), *Uranium from Russia* Russia; Institution of a Five-Year Review Concerning the Suspended Investigation on Uranium From Russia, 76 FR 38694 (July 1, 2011) and *Initiation of Five-year (Sunset) Reviews,* 76 FR 38613 (July 1, 2011). As a result of its review, pursuant to sections 751(c) and 752 of the Act, the Department determined that termination of the Suspension Agreement would likely lead to a continuation or recurrence of dumping and notified the ITC of the magnitude of the margin likely to prevail should the Suspension Agreement be terminated. *See Uranium From the Russian Federation; Final Results of Expedited Sunset Review of the Suspension,* 76 FR 68404 (November 4, 2011).

On March 2, 2012, pursuant to section 751(c) of the Act, the ITC published its determination that termination of the suspended investigation on uranium from the Russian Federation would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Uranium from Russia,* 77 FR 12880 (March 2, 2012) and USITC Publication 4307 (February 2012), entitled ''*Uranium From Russia,* Investigation No. 731–TA–539–C (Third Review)''. Therefore, pursuant to Section 351.218(f)(4) of the Department's regulations, the Department is publishing this notice of the continuation of the Suspension Agreement.

Scope

The merchandise covered by this Suspension Agreement (Section III, ''Product Coverage'') includes the following products from Russia: Natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U235 and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U235 or compounds of uranium enriched in U235; and any other forms of uranium within the same class or kind. Uranium ore from Russia that is milled into U3O8 and/or converted into UF6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of this Suspension Agreement. For purposes of this Suspension Agreement, uranium enriched in U235 or compounds of uranium enriched in U235 in Russia are covered by this Suspension Agreement, regardless of their subsequent modification or blending. Uranium enriched in U235 in another country prior to direct and/or indirect importation into the United States is not considered uranium from Russia and is not subject to the terms of this Suspension Agreement.

Continuation

As a result of the determinations by the Department and the ITC that termination of the suspended investigation would be likely to lead to continuation or recurrence, respectively,

of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the Suspension Agreement. The effective date of continuation will be the date of publication in the **Federal Register** of this Continuation Notice. Pursuant to sections 751(c)(2) of the Act, the Department intends to initiate the next five-year sunset review of this Suspension Agreement not later than February 2017.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 2, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–5671 Filed 3–7–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–813]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 8, 2012.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–1009.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2012, the Department of Commerce (the Department) initiated the countervailing duty investigation of steel wire garment hangers from the Socialist Republic of Vietnam. *See Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation,* 77 FR 3737 (January 25, 2012). Currently, the preliminary determination is due no later than March 23, 2012.

Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated, section 703(c)(1)(B) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

The Department has determined that the parties involved in the proceeding are cooperating and that the investigation is extraordinarily complicated. *See* section 703(c)(1)(B) of the Act. Specifically, the Department is currently investigating alleged subsidy programs involving loans, grants, income tax incentives, and the provision of goods or services for less than adequate remuneration. Due to the number and complexity of the alleged countervailable subsidy practices being investigated, it is not practicable to complete the preliminary determination of this investigation within the original time limit (*i.e.,* by March 23, 2012). Therefore, in accordance with section 703(c)(1)(B) of the Act, we are fully extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated. However, as that date falls on a Sunday (*i.e.,* May 27, 2012) and is followed by a federal holiday on Monday, May 28, 2012, the deadline for completion of the preliminary determination is now Tuesday, May 29, 2012, the next business day.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: March 2, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–5686 Filed 3–7–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828, A–557–809, A–565–801]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines: Final Results of the Expedited Second Five-Year (''Sunset'') Reviews of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2011, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on stainless steel butt-weld pipe fittings (butt-weld pipe fittings) from Italy, Malaysia, and the Philippines pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] On the basis of notices of intent to participate and adequate substantive responses filed on behalf of domestic interested parties, and no adequate response from respondent interested parties, the Department conducted expedited (120-day) sunset reviews of these antidumping duty orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels identified below in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: *Effective Date:* March 8, 2012.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2011, the Department initiated the second sunset reviews of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines pursuant to section 751(c) of the Act. *See Initiation Notice.* On November 16, 2011, the Department received notices of intent to participate from four domestic interested parties, Core Pipe Products, Inc. (formerly Gerlin, Inc.), Ezeflow USA Inc.—Flowline Division (formerly Flowline Division of Markovitz Enterprises, Inc.), Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, domestic interested parties), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of a domestic like product.

On December 1, 2011, we received an adequate substantive response from domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's

[1] *See Initiation of Five-Year* (''*Sunset*'') Review, 76 FR 67412 (November 1, 2011) (*Initiation Notice*).

regulations. Additionally on December 1, 2011, we received an incomplete response to the Department's initiation notice of the five-year sunset review of butt-weld pipe fittings from Italy from respondent interested party Filmag Italia, srl (Filmag). In its incomplete response, Filmag also requested a one-week extension for gathering and submitting the required information for a substantive response. On December 5, 2011, we notified Filmag that in light of the Department's statutory requirement to issue timely determinations in these sunset reviews, and given the fact that parties were afforded ample time in which to provide complete substantive responses, we were unable to grant Filmag's extension request.[2]

On December 6, 2011, we notified Filmag that it did not include a representative certification in its December 1, 2011, submission, and requested that Filmag resubmit its December 1, 2011, submission, with all of the proper certifications, by December 7, 2011.[3] On December 7, 2011, Filmag resubmitted its December 1, 2011, submission, which included all of the proper certifications.

On December 13, 2011, because Filmag did not provide any volume data to show that its exports accounted for more than 50 percent of the total exports of subject merchandise to the United States over the relevant five-year period pursuant to 19 CFR 351.218(e)(1)(ii)(A), we determined its December 1, 2011, response to be inadequate.[4]

We did not receive any substantive response from any other respondent interested parties with respect to the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, or the Philippines. Additionally, we did not receive any rebuttal response from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted expedited sunset reviews of these orders.[5]

On January 6, 2012, domestic interested parties submitted a letter to the Department in support of the Department's Letter to the U.S. International Trade Commission and the Department's Adequacy Determination Memorandum. Additionally, in their January 6, 2012, letter, domestic interested parties reiterated that the Department should find that revocation of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines would be likely to lead to continuation or recurrence of dumping at the margins indicated in domestic interested parties' substantive response.

Scope of the Orders

For purposes of the orders, the product covered is certain stainless steel butt-weld pipe fittings (butt-weld fittings). Butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the orders are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.,* DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the orders.

The orders do not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The butt-weld fittings subject to the orders are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in these cases are addressed in the ''Issues and Decision Memorandum for the Final Results of the Expedited Second Five-Year (''Sunset'') Reviews of the Antidumping Duty Orders on Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Import Administration, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated February 29, 2012 (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACESS). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Sunset Reviews

The Department determines that revocation of the antidumping duty orders on butt-weld pipe fittings from Italy, Malaysia, and the Philippines would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturers/exporters/producers	Weighted-average margin (percent)
Italy:	
Coprosider S.p.A	26.59
All Others	26.59
Malaysia:	
Kanzen Tetsu Sdn. Bhd	7.51
All Others	7.51
The Philippines:	
Enlin Steel Corporation	33.81
Tung Fong Industrial Co., Inc	7.59
All Others	7.59

[2] *See* Letter to Filmag Italia, srl, from Angelica L. Mendoza, Program Manager, Office 7, AD/CVD Operations, dated December 5, 2011.

[3] *See* Letter to Filmag Italia, srl, from Angelica L. Mendoza, Program Manager, Office 7, AD/CVD Operations, dated December 6, 2011.

[4] *See* Memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, ''Adequacy Determination in the Second Five-Year 'Sunset Review' (2006 through 2010) of the Antidumping Duty Orders on Stainless Steel Butt-Weld Pipe Fittings (SSBWPFs) from Italy, Malaysia, and the Philippines,'' dated December 13, 2011 (Adequacy Determination Memorandum).

[5] *See* Letter to Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, from Edward C. Yang, Senior Director, China/NME, AD/CVD Operations, entitled ''Sunset Reviews Initiated on November 1, 2011,'' dated December 8, 2011 (Letter to the U.S. International Trade Commission).

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order of their responsibility concerning the return or destruction of proprietary information disclosed under administrative protection order in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of administrative protective order materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an administrative protective order is a violation which is subject to sanction.

The Department is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: February 29, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–5672 Filed 3–7–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB064

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS/Enforcement Committee and Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, March 22, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee and Advisory Panel will provide an open comment period for the fishing industry, concerning compliance and effectiveness of regulations for New England Fishery Management Plans (FMPs). They will analyze enforcement of Amendment 5 to the Atlantic Herring FMP. They will comment on the NOAA Enforcement priorities. They will also discuss an issue raised by Mid-Atlantic Fishery Management Council about the need for NOAA General Counsel staff in the Northeast. Also in the agenda will be a review of Habitat Committee information on coral zones. The committee will discuss Council questions about the verification of sector landings reports and penalties. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 2, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–5601 Filed 3–7–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before April 9, 2012.

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses below. Please refer to OMB Control No. 3038–0007 in any correspondence.

Ryne Miller, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Comments may also be submitted by any of the following methods:

The agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Hand Delivery/Courier: Same as mail above.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Please submit your comments using only one method and identify that it is for the renewal of 3038–0007.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

FOR FURTHER INFORMATION CONTACT: Ryne Miller, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418–5921; FAX: (202) 418–5527; email: *rmiller@cftc.gov* and refer to OMB Control No. 3038–0007.

SUPPLEMENTARY INFORMATION:

[1] *See* 17 CFR 145.9.

Title: Rules Relating to Regulation of Domestic Exchange Traded Options (OMB Control No. 3038–0007). This is a request for extension of a currently approved information collection.

Abstract: The rules require futures commission merchants and introducing brokers: (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Regulation	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Reporting:					
38.3, 38.4, 40.2 and 40.3 (Procedure for Designation or Self-Certification)	13.00	2.00	26.00	25.00	650
33.7—(Risk Disclosure)	120.00	115.00	13,800.00	0.08	1,104.00
Subtotal (Reporting Requirements)	133.00		13,826.00		1,754.00
Recordkeeping:					
33.8—(Retention of Promotional Material)	170.00	1.00	170.00	25.00	4,250.00
Subtotal (Recordkeeping Requirements)					
Grand Total (Reporting and Recordkeeping)	303.00		13,996.00		6,004.00

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: March 2, 2012.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–5654 Filed 3–7–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–OS–0025]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. 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 reinstated information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 7, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Headquarters, ATTN: Ms. Kathi Snyder, DLA Office of the Inspector General, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221; or call (703)767–6955.

Title; Associated Form; and OMB Number: Defense Logistics Agency Criminal Incident Reporting System records, DLA Forms 1622, 1623, 1624A, and 1753. OMB Control Number 0704–TBD.

Needs and Uses: Information in this system is used by DLA Office of the Inspector General (OIG), Investigations Division (ID), DLA Installation Support Offices, and the DLA Office of General Counsel personnel to monitor progress of cases and to develop non-personal statistical data on crime and criminal investigative support for the future. DLA General Counsel also uses data to review cases, determine proper legal action, and coordinate on all available remedies. Information is released to DLA managers who use the information to determine actions required to correct the causes of loss and to take appropriate action against DLA employees or contractors in cases of their involvement. Records are also used by DLA to monitor the progress of investigations, identify crime conducive conditions, and prepare crime vulnerability assessments/statistics.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies having jurisdiction over or investigative interest in the substance of the investigation, for corrective action, debarment, or reporting purposes.

To Government contractors employing individuals who are subjects of an investigation.

To DLA contractors or vendors when the investigation pertains to a person they employ or to a product or service they provide to DoD when disclosure is necessary to accomplish or support corrective action.

Affected Public: Persons who have committed or are suspected of having committed, any criminal act (felony or misdemeanor) or any violations of laws, regulations, or ethical standards on DLA controlled activities or facilities; or outside of those areas in cases where DLA is or may be a party of interest.

Annual Burden Hours: 1000.

Number of Respondents: 500.

Responses per Respondent: 1.

Average Burden per Response: 2.0 Hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This system contains the following categories of records: Individuals name, address and telephone number, Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Referral, Reports of Investigation, Police Incident Reports, Trade Security Controls Assessment Records, Reports of Post Sale Investigation, Crime Vulnerability Assessments, Response to Leads, Reports of Outreach, Reports of Corrective Action, Commander or Directors Reports of Corrective Action, invoices, sales contracts, messages, statements of witnesses, subjects, and victims, photographs, laboratory reports, data collection reports, and other related papers by DLA Investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

Dated: March 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–5605 Filed 3–7–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Military Housing Privatization Initiative Hurlburt Field and Eglin Air Force Base, Florida, Final Environmental Impact Statement

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On February 6, 2012, the United States Air Force signed the ROD for the Military Housing Privatization Initiative (MPHI) Hurlburt Field and Eglin Air Force Base, Florida, Final Environmental Impact Statement (FEIS). The MHPI ROD documents the Air Force Decision selecting Alternative 4, Mix Alternative (FEIS § 2.3.6) in the FEIS along with the project commenalities described in the FEIS (FEIS § 2.1).

The decision was based on matters discussed in the FEIS, inputs from the public and regulatory agencies, and other relevant factors. The FEIS was made available to the public on June 24, 2011 through a NOA in the **Federal Register** (Volume 76, Number 122, Page 371112) with a wait period that ended on July 25, 2011. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the FEIS. Authority: This NOA is published pursuant to the regulations (40 CFR Part 1506.6) implementing the provisions of the NEPA of 1969 (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR Parts 989.21(b) and 989.24(b)(7)).

FOR FURTHER INFORMATION CONTACT: Mr. Jay Nash; HQ/USAF/A4/7, 1030 Air Force Pentagon, Washington, DC 20330–1030; (703) 693–4001.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2012–5640 Filed 3–7–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Wednesday, March 21, 2012.

3. *Time:* 12 p.m.–2:30 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

4. *Location:* Capitol Visitor's Center SVC201, Washington, DC.

5. *Purpose of the Meeting:* This is the 2012 Organizational Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

6. *Agenda:* The Academy leadership will provide the Board updates on the following: The 2011 Annual Report, USMA Budget and Personnel, Cadet Barracks, Integration of USMAPS at USMA, Sexual Harassment/Assault Response and Prevention, Supporting US Army Strategies, and the DAIG Cemetery Inspection.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Joy A. Pasquazi (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–5635 Filed 3–7–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposed Development of the Alaska Stand Alone Gas Pipeline Project (ASAP), From the North Slope to South Central Alaska, Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Extension of public comment period.

SUMMARY: In the January 20, 2012, issue of the **Federal Register** (77 FR No. 13), the U.S. Army Corps of Engineers (Corps) published its Notice of Availability for the ASAP DEIS for public comment. In that notice, the Corps stated that written comments must be submitted on or before March 5, 2013. Instructions for submitting comments are provided in the January 20, 2010, **Federal Register** notice. In response to scheduling conflicts for public meetings, the Corps has decided to extend the public comment period to April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Romero, Project Manager, Alaska District Regulatory Division, (907) 753–2773

SUPPLEMENTARY INFORMATION: None.

Dated: March 1, 2012.

William Keller,

North Branch Chief, Alaska District Regulatory Division, JBER, AK 99506, U.S. Army Corps of Engineers.

[FR Doc. 2012–5665 Filed 3–7–12; 8:45 am]

BILLING CODE 3720–58–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 77 FR 479 (January 5, 2012); FR Doc. 2012–44.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Session I: 1 p.m.–4 p.m., March 22, 2012; Session II: 6 p.m.–9 p.m., March 22, 2012, Three Rivers Convention Center, 7016 West Grandridge Boulevard, Kennewick, Washington 99352.

CHANGES IN THE MEETING: The Defense Nuclear Facilities Safety Board (Board) is expanding the matters to be considered in Session I of the hearing and meeting. Session I will also include testimony from the Department of Energy (DOE) and its contractors concerning the status of actions related to unresolved technical safety issues in the design of the Waste Treatment and Immobilization Plant (WTP) and infrastructure needs at the Tank Farms. The Board will also examine the relationship between the resolution of these unresolved safety issues and development of a sound nuclear safety strategy. To illustrate these challenges, the Board will explore at least two areas of technical concern: erosion/corrosion and pulse jet mixing.

Session II of the hearing concerns the status of actions related to the DOE's implementation plan for the Board's Recommendation 2011–1, *Safety Culture at the Waste Treatment and Immobilization Plant.* Session II includes several panels of witnesses, including a panel of DOE Headquarters senior management personnel who will discuss DOE's plan for corrective actions for safety culture concerns and management/resolution of safety and technical issues across the defense nuclear facilities complex. Since this panel involves just headquarters personnel, the Board has determined that it would be more beneficial to convene the headquarters panel in Washington, DC, at a later date. The Board will therefore be reconvening a separate supplemental panel session, a continuation of hearing Session II, from 9 a.m.–12 p.m., on Tuesday, May 22, 2012, at the Board's Washington, DC, Headquarters located at 625 Indiana Avenue NW., Suite 300, Washington, DC 20004–2001.

The Board's instructions for public participation for Sessions I and II of the March 22, 2012 hearing are described in the **Federal Register** notice (77 FR 479) for that hearing. Public participation for the reconvened Session II hearing in Washington, DC, is also invited. The Board is setting aside time at the end of the reconvened Session of the hearing for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. For the continuation of Session II, those who contact the Board prior to close of business on May 18, 2012, will be scheduled to speak. At the beginning of continued hearing, the Board will post a schedule for speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing or may be sent to the Board's Washington, DC, office. The hearing will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the hearing, along with a DVD video recording, will be made available by the Board for inspection and viewing by the public at the Board's Washington, DC, office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

The Board also stated in the original **Federal Register** notice that the hearing record would remain open until April 23, 2012, for the receipt of additional materials. As a result of the continuation of Session II, the Board now extends the period of time for which the full hearing record will remain open to June 23, 2012.

CONTACT PERSON FOR MORE INFORMATION: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: March 5, 2012.

Peter S. Winokur,

Chairman.

[FR Doc. 2012–5720 Filed 3–6–12; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Environmental Assessment for a Radiological Work and Storage Building at the Knolls Atomic Power Laboratory Kesselring Site

AGENCY: Naval Nuclear Propulsion Program, Department of Energy.

ACTION: Notice of Availability of a Draft Environmental Assessment.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); and the Department of Energy (DOE) implementing procedures (10 CFR part 1021); the Naval Nuclear Propulsion Program (NNPP) announces the availability of a Draft Environmental Assessment (EA) for construction and operation of a radiological work and storage building at the Knolls Atomic Power Laboratory (KAPL) Kesselring Site in West Milton, New York. A modernized facility is needed to streamline radioactive material handling and storage operations, permit demolition of aging facilities, and accommodate efficient maintenance of existing nuclear reactors. The Draft EA may be viewed at the Saratoga Springs Public Library in Saratoga Springs, NY,

the Schenectady County Public Library (Niskayuna Branch) in Niskayuna, NY, or online at *http://www.NNPP-NEPA.us/environmental_assessments/kesselring_site/rwsb_ea.*

DATES: Interested parties are invited to provide comments regarding the Draft EA, on or before April 9, 2012, to ensure full consideration during the decision making process.

ADDRESSES: Written comments may be submitted by mail to: David Delwiche, Naval Reactors Laboratory Field Office, P.O. Box 1069, Schenectady, NY 12301.

Comments provided by email should be submitted to *Kesselring_radbuilding2012@unnpp.gov.*

Comments provided by phone should use 518–395–6366.

FOR FURTHER INFORMATION CONTACT: For further information about this project, contact Mr. David Delwiche, as described above.

SUPPLEMENTARY INFORMATION: The NNPP is responsible for all aspects of U.S. Navy nuclear power and propulsion, pursuant to 50 U.S.C. 2406, 2511. These responsibilities include design, maintenance, and safe operation of nuclear propulsion systems throughout their operational life cycles. A crucial component of this mission is to provide prospective Naval nuclear propulsion plant operators and officers with training and certification in the actual hands-on operation of a nuclear propulsion plant. Two land-based training platforms are located at the Knolls Atomic Power Laboratory Kesselring Site near West Milton, Saratoga County, New York.

The developed portion of the Kesselring Site consists of approximately 65 acres of land on an approximately 3900-acre reservation. Facilities on the site include three pressurized water naval nuclear propulsion plants, one of which has been permanently shut down, defueled, and is in the process of being dismantled. The site also contains administrative offices, machine shops, waste storage facilities, oil storage facilities, training facilities, chemistry laboratories, cooling towers and a boiler house.

The EA evaluates the potential environmental impacts of constructing and operating a new radiological work and storage building at the Knolls Atomic Power Laboratory Kesselring Site. A modernized radiological work and storage building would streamline radioactive material handling and storage operations, permit demolition of aging facilities, and accommodate efficient maintenance of existing operating nuclear reactors. No spent nuclear fuel would be handled or stored in any of the alternatives being considered. The potential environmental impacts associated with operations in the new facility or the alternatives is consistent with those already addressed in a previous Environmental Impact Statement associated with operations at the Kesselring Site, which concluded that impacts upon the environment would be small. Public comments to this draft EA must be received by April 9, 2012, to ensure their consideration in the preparation of the final EA and determination of whether a Finding of No Significant Impact or Environmental Impact Statement is appropriate.

Issued in Washington, DC, on March 2, 2012.

Alan R. Denko,

Deputy Director, Regulatory Affairs, Naval Nuclear Propulsion Program.

[FR Doc. 2012–5659 Filed 3–7–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)

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

ACTION: Notice of Establishment of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) and Solicitation of Nominations for Membership.

SUMMARY: Pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (FACA), and in accordance with Title 41, Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, and in accordance with the Negotiated Rulemaking Act of 1996 (NRA), and the Administrative Procedure Act, notice is hereby given that the ASRAC will be established for a two-year period.

The Committee will provide advice and recommendations to the Secretary of Energy on matters concerning the DOE's Appliances and Commercial Equipment Standards Program's (Program) test procedures and rulemaking process. Formation of this committee allows the Program to further improve the rulemaking process. The Committee provides advice and makes recommendations on the:

(1) Development of minimum efficiency standards for residential appliances and commercial equipment, (2) development of product test procedures, (3) certification and enforcement of standards, (4) labeling for various residential products and commercial equipment, and (5) specific issues of concern to DOE, as requested by the Secretary of Energy, the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), and the Buildings Technologies Program Manager.

Additionally, the establishment of the Appliance Standards and Rulemaking Federal Advisory Committee has been determined to be essential to the conduct of the Department's mission and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act, the Negotiated Rulemaking Act of 1996 (NRA), and the Administrative Procedure Act (APA).

This notice also requests nominations for members on the Committee, to ensure a wide range of member candidates and a balanced committee.

DATES: The deadline for nominations for members must be received on or before April 2, 2012.

ADDRESSES: The nominee's name, resume, biography, and any letters of support must be submitted in electronic format via email to *asrac@ee.doe.gov.* Any requests for further information should also be sent via email to *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy is hereby soliciting nominations for members of the Committee. The Secretary of Energy will appoint approximately 25 Committee members. Members will be selected with a view toward achieving a balanced committee of experts in fields relevant to energy efficiency, appliance and commercial equipment standards, to include DOE, as well as representatives of industry (including manufacturers and trade associations representing manufacturers, component manufacturers and related suppliers, and retailers), utilities, energy efficiency/environmental advocacy groups and consumers. Committee members will serve for a term of three years or less and may be reappointed for successive terms, with no more than two successive terms. Appointments may be made in a manner that allows the terms of the members serving at any time to expire at spaced intervals, so as

to ensure continuity in the functioning of the Committee. The Chair and Vice Chair of the Committee will be appointed by the Assistant Secretary for EERE, from among the selected members, and the Committee is expected to meet approximately twice per year, or as necessary. Subcommittees may be formed to address appliance standards. Some Committee members may be appointed as special Government employees, experts in fields relevant to energy efficiency and appliance and commercial equipment standards; or as representatives of industry (including manufacturers and trade associations representing manufacturers, component manufacturers and related suppliers, and retailers), utilities, energy efficiency/environmental advocacy groups and consumers. Special Government employees will be subject to certain ethical restrictions and such members will be required to submit certain information in connection with the appointment process.

Process and Deadline for Submitting Nominations: Qualified individuals can self-nominate or be nominated by any individual or organization. Nominators should submit (via email to *asrac@ee.doe.gov*) on or before April 2, 2012, a description of the nominee's qualifications, including matters enabling the Department to make an informed decision, not limited to, the nominee's education and professional experience. Should more information be needed, DOE staff will contact the nominee, obtain information from the nominee's past affiliations or obtain information from publicly available sources, such as the internet. A selection team will review the nomination packages. This team will be comprised of representatives from several DOE Offices. The selection team will seek balanced viewpoints and consider many criteria, including:
(a) Scientific or technical expertise, knowledge, and experience;
(b) stakeholder representation;
(c) availability and willingness to serve; and (d) skills working in committees, subcommittees and advisory panels. The selection team will make recommendations regarding membership to the Assistant Secretary for EERE. The Assistant Secretary for EERE will submit a list of recommended candidates to the Secretary of Energy for review and selection of Committee members.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations to the Committee take into account the needs of the diverse groups served by DOE, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. Please note, however, that Federally-registered lobbyists and individuals already serving on another Federal advisory committee are ineligible for nomination.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, Designated Federal Officer, by telephone at (202) 287–1692.

Issued in Washington, DC, on March 1, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–5661 Filed 3–7–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14308–001]

Carbon Zero, LLC.; Notice of Application Tendered for Filing With the Commission, Intent To Waive Solicitation of Additional Study Requests, and Intent To Approve of the Use of the Traditonal Licensing Process

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14308–001.

c. *Date filed:* February 17, 2012.

d. *Applicant:* Carbon Zero, LLC.

e. *Name of Project:* Vermont Tissue Mill Hydroelectric Project.

f. *Location:* On the Walloomsac River, in the Town of Bennington, Bennington County, Vermont. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William F. Scully, Carbon Zero, LLC., P.O. Box 338, North Bennington, VT 05257; (802) 442–0311; *wfscully@gmail.com.*

i. *FERC Contact:* Amy K. Chang, (202) 502–2850, or email at *amy.chang@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. The Commission previously solicited additional study requests on November 7, 2011. No studies were requested; therefore, the Commission is providing notice that it intends to waive solicitation of additional study requests on the application filed on February 17, 2012.

l. Deadline for filing comments on the use of the Traditional Licensing Process and requests for cooperating agency status: 30 days from the issuance of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. This application is not ready for environmental analysis at this time.

n. *Project Description:* Vermont Tissue Mill Hydroelectric Project would consist of two existing dams separated by a 400-foot-wide island and include: (1) An existing 15-foot-high, 85-foot-long primary dam with a spillway crest elevation of 555.0 feet above mean sea level (msl) topped with reinstalled 4-inch-high flashboards; (2) an existing 6-foot-high, 80-foot-long emergency spillway dam with a crest elevation of 555.5 feet above msl and a proposed 2.5-foot-high, 2.5-foot-wide minimum flow weir equipped with stop logs; (3) an existing 6-foot-high, 8-foot-wide flood gate located on the south abutment of the primary dam; (4) an existing 2,400-foot-long, 6.4-acre impoundment with a normal water surface elevation of 550 feet above msl; (5) an existing intake structure equipped with two 12-foot-high, 16-foot-wide flume openings equipped with stop log slots and new

trashracks connected to two water conveyance channels, one 12-foot-high, 35-foot-long and one 12-foot-high, 85-foot-long; (6) an existing powerhouse with two new Kaplan turbine generating units with a total installed capacity of 360 kilowatts; (7) a new 1.5-foot-diameter valve in the powerhouse that would discharge flows to the tailrace; and (8) a new buried 480-volt, 125-foot-long transmission line connecting the powerhouse to the regional grid. In addition to installing the new turbine generating units and new transmission line listed above, the applicant proposes to renovate and repair the trashracks and tailrace retaining wall, and excavate a new tailrace downstream of the primary dam. The project would be operated in a run-of-river mode and would generate an annual average of approximately 1,454 megawatt-hours.

o. Carbon Zero, LLC prepared an application for an exemption from licensing, which it subsequently revised and refiled on February 17, 2012, as an application for an original minor license with a request to use the Traditional Licensing Process (TLP). Based on the contents of the exemption and license applications, the TLP three-stage consultation process has been completed; therefore, the Commission is providing notice that it intends to approve Carbon Zero's request to use the TLP.

p. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov.*

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. With this notice, we are initiating consultation with the Vermont State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

r. Procedural schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Notice of Acceptance	April 2012.
Issue Notice of Ready for Environmental Analysis.	May 2012.
Notice of the availability of the EA.	Nov. 2012.

Dated: March 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5614 Filed 3–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG12–16–000, EG12–17–000, EG12–18–000, EG12–19–000, EG12–20–000, EG12–21–000, EG12–22–000, EG12–23–000]

Rocky Ridge Wind Project, LLC, Blackwell Wind, LLC, CPV Cimarron Renewable Energy Company, LLC, Minco Wind Interconnection Services, LLC, Shiloh III Lessee, LLC, California Ridge Wind Energy LLC, Perrin Ranch Wind, LLC, Erie Wind, LLC: Notice of Effectiveness of Exempt Wholesale Generator Status

Take notice that during the month of February 2012, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: March 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5616 Filed 3–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–515–000]

Millennium Pipeline Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed: Minisink Compressor Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Minisink Compressor Project, proposed by Millennium Pipeline Company, LLC (Millennium) in the above-referenced docket. Millennium requests authorization to construct and operate a natural gas compressor station in Minisink, New York to increase deliveries to its interconnection with Algonquin Gas Transmission, LLC at Ramapo, New York, to approximately 675,000 dekatherms per day.

This EA assesses the potential environmental effects of the construction and operation of the Minisink Compressor Project in accordance with the requirements of the National Environmental Policy Act. Staff concludes that the proposed project, with appropriate mitigation, would not constitute a major federal action significantly affecting the quality of the human environment.

Millennium's proposed Minisink Compressor Project consists of two 6,130-horsepower gas-fired compressor units that would be housed within a new building, as well as an access driveway, parking areas, a station control/auxiliary building, intake and exhaust silencers, turbine lube oil coolers, unit blowdown silencers, a filter-separator with a liquids tank, and an emergency electrical power generator. Pipeline facilities required for the project include approximately 545 feet of new 36-inch-diameter suction and discharge pipelines which would connect the compressor station to the existing mainline. A new mainline valve assembly would also be required on the existing pipeline located between the new suction and discharge pipelines.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is

important that we receive your comments in Washington, DC on or before April 2, 2012.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP11–515–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP11–515). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: March 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5615 Filed 3–7–12; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL12–41–000; QF11–44–001; QF11–45–001]

Rainbow Ranch Wind, LLC, Rainbow West Wind, LLC; Notice of Petition for Enforcement

Take notice that on March 1, 2012, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USA 8242–3(h), Rainbow Ranch Wind, LLC (Rainbow Ranch) and Rainbow West Wind, LLC (Rainbow West) (collectively, Petitioners) filed a petition requesting the Federal Energy Regulatory Commission (Commission) initiate an enforcement action against the Idaho Public Utilities Commission (Idaho PUC) to remedy the rejection of (1) a Firm energy Sales Agreement between Rainbow Ranch and Idaho Power Company (IPC) and (2) a Firm Energy Sales Agreement between Rainbow West and IPC. In the alternative, Petitioners request that the Commission make specific findings with respect to Idaho PUC Order Nos. 32256 and 32300, as would allow Petitioners to pursue enforcement action in a U.S. Federal District Court.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 22, 2012.

Dated: March 2, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5617 Filed 3–7–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9645–2]

Assessment of Potential Large-Scale Mining on the Bristol Bay Watershed of Alaska: Nomination of Peer Reviewers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Call for nominations; extension.

SUMMARY: On February 24, 2012 EPA announced a two week period for the public to nominate qualified experts to be considered for the external review panel of an anticipated EPA draft report describing impacts associated with potential large-scale mining development in the Nushagak and Kvichak watersheds of Bristol Bay,

Alaska. EPA is extending the nomination period by one week, in response to requests from stakeholders and the public.

DATES: The nomination period will be extended by one week and will end March 16, 2012.

ADDRESSES: Nominations of potential members of the Bristol Bay Assessment peer review panel are being accepted and evaluated by an independent EPA contractor. Nominations are being accepted online through an internet Web site, by U.S. Postal mail, or by an overnight/priority mail service. Those interested in submitting nominations online should complete the form found at *http://www.versar.com/epa/bristolbaynominationform.html.* Mailed nominations should be addressed to the EPA contractor, Versar, Inc., 6850 Versar Center, Springfield, VA 22151, should reference Bristol Bay Nomination Form, and should include all nominee information outlined in the **SUPPLEMENTARY INFORMATION** section. Mailed submissions must be received by March 16, 2012. Questions concerning the online form should be directed to the EPA contractor, Versar, Inc., at 6850 Versar Center, Springfield, VA 22151; by email *bcolon@versar.com* (subject line: Bristol Bay Assessment Nomination Form); or by phone: (703) 642–6727 (ask for Betzy Colon, the Peer Review Coordinator).

FOR FURTHER INFORMATION CONTACT: For additional information concerning the Bristol Bay Assessment peer review panel nominations, contact Dr. Kate Schofield, Office of Research and Development, The National Center for Environmental Assessment. Telephone: 703–347–8533; or email: *schofield.kate@epa.gov.*

SUPPLEMENTARY INFORMATION: Alaska's Bristol Bay watershed provides habitat for one of the largest wild salmon populations in the world. In February 2011, EPA began a scientific assessment of the Bristol Bay watershed to understand how large-scale mining activities might affect water quality and habitat. EPA will focus primarily on the Kvichak and Nushagak River drainages, the primary areas in the watershed open to large-scale development.

This assessment was launched in response to concerns from federally recognized tribes and others, who petitioned the agency to evaluate potential impacts of large-scale mining on aquatic resources. The assessment will evaluate the potential for large-scale mining development to have adverse effects on salmon and resident fish populations of the Kvichak and Nushagak River drainages, and if these effects are likely to affect wildlife and human populations in the region. Additional information describing the assessment, progress to date, and status can be found at: *www.epa.gov/region10/bristolbay.*

Expertise Sought: EPA is seeking nominations of experts to serve on the external peer review panel for the Bristol Bay Assessment. Nominees should possess, and demonstrate, background knowledge and experience in one or more of the following areas: (1) Metals (particularly porphyry copper) mining, (2) salmon fisheries biology, (3) surface, subsurface, or watershed hydrology, (4) aquatic ecology, (5) biogeochemistry, (6) seismology, (7) ecotoxicology, (8) wildlife ecology, and/or (9) indigenous Alaskan cultures.

Selection Criteria: Selection criteria for members of the external review panel include the following: (1) Demonstrated expertise through relevant peer reviewed publications; (2) professional accomplishments, and recognition by professional societies; (3) demonstrated ability to work constructively and effectively in a committee setting; (4) absence of financial conflicts of interest; (5) no actual conflicts of interest or the appearance of bias; (6) willingness to commit adequate time for the thorough review of the assessment report commencing in late April 2012; and (7) availability to participate in-person in a peer review panel meeting in Anchorage, Alaska during August 2012.

Nominee Information: Any interested person or organization may nominate qualified persons to be considered for appointment to the peer review panel. Self-nominations will also be accepted. Nominations may be submitted either online using the following URL: *http://www.versar.com/epa/bristolbaynominationform.html* or by mail to the EPA contractor listed in the **ADDRESSES** section. The following information should be provided on the nomination form/mail-in documentation: (1) Contact information for the person making the nomination; (2) contact information for the nominee; (3) the disciplinary and specific areas of expertise of the nominee; (4) the nominee's curriculum vita; (5) and a biographical sketch of the nominee indicating current position, educational background, past and current research activities, and recent service on other advisory committees or professional organizations. Persons having questions about the nomination procedures should contact the designated contact above.

Notification of nominees: EPA's contractor, Versar, Inc., will notify candidates of selection or non-selection. The Contractor may add additional experts to the list of nominees to develop a balanced panel representing the expertise needed to fully evaluate EPA's draft assessment report. After the peer review panel has been finalized, a list of panel members will be posted on the project Web site at *www.epa.gov/region10/bristolbay.* Compensation of non-federal peer review panel members will be provided by EPA's contractor.

Authority: Clean Water Act Section 404.

Dated: March 2, 2012.

Darrel A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–5645 Filed 3–7–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 09–197; WT Docket No. 10–208; AU Docket No. 12–25; DA 12–271]

Eligible Telecommunications Carrier Designation for Participation in Mobility Fund Phase I

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission's Wireless Telecommunications and Wireline Competition Bureaus describe the process and requirements for applicants seeking Eligible Telecommunications Carrier (ETC) Designation from the Commission for participation in Mobility Fund Phase I Auction 901.

ADDRESSES: All petitions to be designated an ETC must reference WC Docket No. 09–197. In addition, petitions to be designated for purposes of participation in Auction 901 must reference WT Docket No. 10–208 and AU Docket No. 12–25. The Wireless Telecommunications and Wireline Competition Bureaus strongly encourage interested parties to file petitions electronically, and request that an additional copy of all petitions be submitted electronically to the following address: *auction901@fcc.gov.* Petitions may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Electronic Filers: Petitions may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

▪ Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8 a.m. to 7 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

▪ *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Additional Filings. In addition:

▪ One copy of each petition must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, *www.bcpiweb.com;* phone: (202) 488–5300 fax: (202) 488–5563.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division* concerning Auction 901 (ETC) please call Erik Salovaara at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 901 ETC Public Notice* released on February 24, 2012. The complete text of the *Auction 901 ETC Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 901 ETC Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–271. The *Auction 901 ETC Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov,* or by using the search function for Dockets, AU 12–25, WC 09–197 and WT 10–208 on the Commission's Electronic Comment Filing System (ECFS) web page at *http://www.fcc.gov/cgb/ecfs/.*

1. Any party that wishes to participate in Auction 901 for Connect America Fund (CAF) Mobility Fund Phase I support must be designated as an eligible telecommunications carrier in any geographic area for which it seeks such support, with one exception for Tribal entities. Under the exception, a Tribally-owned or controlled entity may participate with respect to its Tribal lands, if prior to filing an application, it has a pending petition but has not yet been designated as an ETC for the relevant Tribal lands. An entity covered by this exception must be designated as an ETC before it may receive Mobility Fund Phase I support. Interested parties should ascertain whether they have the necessary ETC designation or need to seek such designation. Common carriers subject to the jurisdiction of a state in which they seek designation should petition that state's commission for designation as an ETC to provide voice service. Common carriers not subject to the jurisdiction of the relevant state commission should petition the Federal Communications Commission (Commission) for designation as an ETC.

2. Auction 901 is scheduled to begin on September 27, 2012. Any party that wishes to participate in Auction 901 with respect to an area for which it is not already designated an ETC should initiate the designation process as soon as possible to increase the likelihood that the process will be completed prior to the deadline for submitting an application for Auction 901. The deadline for applications to participate in Auction 901 will be set when the Bureaus release a public notice announcing procedures for the auction. Auction applications in spectrum license auctions typically must be filed two to three months prior to the start of an auction.

3. The *Auction 90 ETC Public Notice* describes the Commission's designation process, including the requirements for seeking ETC designation from the Commission. Parties should refer to relevant Commission rules and orders to ensure that they meet all the requirements for ETC designation. To the extent that any part of the descriptive overview in the *Auction 901 ETC Public Notice* may be construed to be inconsistent with the terms of the Commission's orders or rules, the orders and rules govern. The Bureaus provide information on how to facilitate petitions by any party wishing to seek designation as an ETC prior to applying for Auction 901. A party's designation as an ETC may be conditioned upon the party winning support from the Mobility Fund in Auction 901. A current ETC that meets all other applicable requirements may participate in Auction 901 with respect to areas within its current ETC service area without petitioning for any change to its ETC status.

4. A party that seeks an ETC designation from the Commission must certify compliance with certain threshold conditions in order for its petition to be considered. More specifically, an ETC petition to the Commission must contain the following: (1) A certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. 254(c); (3) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; (4) a description of how the petitioner advertises the availability of supported services and the charges therefore using media of general distribution; and (5) a detailed description of the geographic service area for which the petitioner requests an ETC designation from the Commission. Petitioners also must certify that neither the petitioner nor any party to the application is subject to a denial of federal benefits, including Commission benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, as implemented in 47 CFR 1.2002.

5. ETCs must satisfy various service obligations, consistent with the public interest. A party petitioning for designation as an ETC therefore must also: (1) Certify that it will comply with the service requirements applicable to

the support that it receives; (2) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area, with an estimate of the area and population that will be served as a result of the improvements; (3) demonstrate how it will remain functional in emergency situations; and (4) demonstrate that it will satisfy consumer protection and service quality standards.

6. Certain additional requirements apply for parties seeking ETC designation for a service area that includes an area served by a rural telephone company. In such cases, the party's service area will be the rural telephone company's study area unless and until the Commission and the relevant State establish a different definition of the study area, after taking into account factors established by a Federal State Joint Board instituted under the Communications Act. A petitioner seeking designation for a service area that includes, but is not the same as, a rural telephone company's service area must request redefinition. If the Commission grants redefinition, it will then seek agreement from the state commission with jurisdiction over the rural telephone company, even if the petitioner itself is not subject to that state commission's jurisdiction.

7. *Pleading Cycle.* Consistent with existing Commission procedures regarding designation of eligible telecommunications carriers, upon receipt of a petition for designation pursuant to 47 U.S.C. 214(e)(6) in connection with Phase I of the Mobility Fund, the Commission will issue a public notice establishing a pleading cycle.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2012–5594 Filed 3–7–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: February 27, 2012.

Federal Deposit Insurance Corporation

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10426	Central Bank of Georgia	Ellaville	GA	2/24/2012
10427	Home Savings of America	Little Falls	MN	2/24/2012

[FR Doc. 2012–5636 Filed 3–7–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–04]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: March 14, 2012.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered:

February 8, 2012 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: March 2, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–5618 Filed 3–7–12; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–03]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: March 14, 2012.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered:

Summary Agenda:

February 8, 2012 minutes—Open Session.

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda:

Appraisal Foundation September–November 2011 Grant Reimbursement Requests
Revised ASC Delegations of Authority
Hawaii Compliance Review
Montana Compliance Review
Nebraska Compliance Review
New Mexico Compliance Review
New York Compliance Review
Wisconsin Compliance Review

How to Attend and Observe an ASC meeting: Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: March 2, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–5619 Filed 3–7–12; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *FBF Partners, LP,* San Francisco, California; to acquire voting shares of Congressional Bancshares, Inc., Bethesda, Maryland, and thereby indirectly acquire voting shares of Congressional Bank, Potomac, Maryland.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *John R. Gandrud, as Trustee of The Erick A. Gandrud Irrevocable Trust, and Erick A. Gandrud, as Trustee of The John R. Gandrud Irrevocable Trust,* both of Glenwood, Minnesota; to become members of The Gandrud Family Group, and to retain voting shares of Eagle Investment Company, Inc., and thereby indirectly retain voting shares of Eagle Bank, both in Glenwood, Minnesota.

2. *Daniel Eugene Bergee and Dale VanHavermaet,* both of Hawley, Minnesota, as proposed co-trustees, to acquire control of State Bank of Hawley Employee Stock Ownership Plan & Trust (ESOP), and thereby indirectly acquire control of Bankshares of Hawley, Inc., and State Bank of Hawley, all in Hawley, Minnesota.

Board of Governors of the Federal Reserve System, March 5, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–5625 Filed 3–7–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Hilliard R. Crews, individually, and as a member of the Crews family control group (Jason L. Crews, Cynthia Michelle Leslie Crews, Roger L. McGee, and Stacy Crews McGee) all of Collierville, Tennessee,* to acquire control of Triumph Bancshares, Inc., Germantown, Tennessee, and thereby indirectly acquire control of Triumph Bank, Memphis Tennessee.

Board of Governors of the Federal Reserve System, March 2, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–5592 Filed 3–7–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Carver Financial Corporation, Savannah, Georgia,* to retain control of Carver Development CDE I LLC, Savannah, Georgia, and thereby continue to engage in community development activities pursuant to section 225.28 (b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, March 2, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–5591 Filed 3–7–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252; Correction; Information Collection; Docket 2012–0001, Sequence 6]

General Services Administration Acquisition Regulation; Preparation, Submission, and Negotiation of Subcontracting Plans; Correction

AGENCY: General Services Administration (GSA).

ACTION: Correction.

SUMMARY: This document contains a correction to the information collection notice that was published in the **Federal Register** at 77 FR 9658 on February 17, 2012.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, at 1275 First Street NE., Washington, DC 20417, or (202) 501–4755, for information pertaining to status or publication schedules. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans; Correction.

Correction

In the information collection document appearing at 77 FR 9658 on February 17, 2012, on page 9658, second column, paragraph 2, line 12, the figures ''$500,000 (1,000,000)'' is corrected to read ''$650,000 (1,500,000)''.

Dated: March 2, 2012

Mindy S. Connolly,

Chief Acquisition Officer, U.S. General Services Administration.

[FR Doc. 2012–5607 Filed 3–7–12; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: 0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and ASPE document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office at (202) 690–5683. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Ryan White HIV/AIDS Program Modeling Project—OMB No. 0990–New–Office of the Assistant Secretary for Planning and Evaluation.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting the Office of Management and Budget (OMB) approval of a new collection that will examine the service needs under the Ryan White HIV/AIDS Program as the provisions of the Affordable Care Act are implemented, and identify strategies for ensuring that available federal resources are directed to areas of greatest need. To supplement the analysis of existing quantitative data sources, including Ryan White HIV/AIDS Program data, Medicaid enrollment and claims data, and HIV surveillance data, this two-year information collection request is for primary data collection in the form of telephone interviews with administrators of Ryan White grants and providers of HIV care services. In light of Congressional interest expressed in Senate Report 111–243 concerning how the Ryan White Program will transition into a larger system of care with the implementation of the Affordable Care Act, these interviews will help ASPE to understand the potential impact of the Affordable Care Act from the perspectives of Ryan White grantees and service providers. The interview protocols will cover topics including HIV service needs and use; coordination of client insurance enrollment, benefits, and services; factors that influence variation in HIV care costs and selection of AIDS Drug Assistance Program cost containment procedures; and methods of ensuring quality care.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Ryan White Part A Grantees (metropolitan area officials)	26	1	1.08	28
Ryan White Part B Grantees (state officials)	51	1	1.08	55
Ryan White Part A, B, C, D, or Minority AIDS Initiative Providers (service providers)	133	1	55/60	122
Total	210			205

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2012–5666 Filed 3–7–12; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP STAC or Advisory Committee), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 1 p.m.–5 p.m., March 28, 2012.

Place: This meeting is available via telephone and Web Conference. Audio will be available by telephone and visuals will be available by Web Conference. The USA toll-free, dial-in number is 1–800–593–0693. To be connected to the meeting, you will need to provide the following participant code to the operator: 4447238. To obtain further instructions on how to access the meeting online through Web Conference, see the instructions at the Committee's Web site: *http://www.cdc.gov/NIOSH/topics/wtc/stac/meetings/.*

Public Comment Times and Date: 1:10 p.m.–1:55 p.m., March 28, 2012.

Please note that the public comment period ends at the time indicated above or following the last call for comments, whichever is earlier. Members of the public who want to comment must sign up by providing their name by mail, facsimile, email, or telephone, as given below. Each commenter will be provided up to five minutes for comment. A limited number of time slots are available and will be assigned on a first come-first served basis. Written comments will also be accepted from those unable to attend the public session.

Status: Open to the public, limited only by the number of telephone lines. The conference line will accommodate up to 300 callers; therefore it is suggested that those interested in calling in to listen to the committee meeting share a line when possible.

Background: The Advisory Committee was established by Public Law 111–347 (The James Zadroga 9/11 Health and Compensation Act of 2010, Title XXXIII of the Public Health Service Act), enacted on January 2, 2011 and codified at 42 U.S.C. 300mm–300mm–61.

Purpose: The purpose of the Advisory Committee is to review scientific and medical evidence and to make recommendations to the World Trade Center (WTC) Program Administrator regarding additional WTC Health Program eligibility criteria and potential additions to the list of covered WTC-related health conditions. Title XXXIII of the Public Health Service Act established within the Department of Health and Human Services (HHS), the World Trade Center (WTC) Health Program, to be administered by the WTC Program Administrator. The WTC Health Program provides: (1) Medical monitoring and treatment benefits to eligible emergency responders and recovery and cleanup workers (including those who are Federal employees) who responded to the September 11, 2001, terrorist attacks, and (2) initial health evaluation, monitoring, and treatment benefits to residents and other building occupants and area workers in New York City, who were directly impacted and adversely affected by such attacks (''survivors''). Certain specific activities of the WTC Program Administrator are reserved to the Secretary, HHS, to delegate at her discretion; other WTC Program Administrator duties not explicitly reserved to the Secretary, HHS, are assigned to the Director, NIOSH. The administration of the Advisory Committee established under Section 300mm–1(a) is left to the Director of NIOSH in his role as WTC Program Administrator. CDC and NIOSH provide funding, staffing, and administrative support services for the Advisory Committee. The charter was issued on May 12, 2011, and will expire on May 12, 2013.

Matters To Be Discussed: The agenda for the Advisory Committee meeting includes the petition to add cancer, or types of cancer, to the list of covered WTC-related health conditions. The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. The comments should be limited to two pages and submitted to the contact person below by March 23, 2012. Efforts will be made to provide the two-page written comments received by the deadline below to the committee members before the meeting. Comments in excess of two pages will be made publicly available at the NIOSH docket (*http://www.cdc.gov/niosh/docket/archive/docket248.html*).

Public Comment Sign-up and Submissions to the Docket: To sign up to provide public comments or to submit comments to the docket, send information to the NIOSH Docket Office by one of the following means:

Mail: NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Facsimile: (513) 533–8285.

Email: *nioshdocket@cdc.gov.*

Telephone: (513) 533–8611.

Submissions to the docket should reference docket #248.

Policy on Redaction of Committee Meeting Transcripts (Public Comment): Transcripts will be prepared and posted to NIOSH Docket 248 within 60 days after the meeting. If a person making a comment gives his or her name, no attempt will be made to redact that name. NIOSH will take reasonable steps to ensure that individuals making public comments are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include a statement read at the start of the meeting stating that transcripts will be posted and names of speakers will not be redacted. If individuals in making a statement reveal personal information (e.g., medical information) about themselves, that information will not usually be redacted. The CDC Freedom of Information Act coordinator will, however, review such revelations in accordance with the Freedom of Information Act and if deemed appropriate, will redact such information. Disclosures of information concerning third party medical information will be redacted.

Contact Person for More Information: Paul J. Middendorf, Ph.D., Designated Federal Officer, NIOSH, CDC, 4676 Columbia Parkway Mail Stop R–45, Cincinnati, Ohio 45226, telephone 1 (888) 982–4748; email: *wtc-stac@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 21, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–5624 Filed 3–7–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Grants Administration.

OMB No.: 0980–0243.

Description: 45 CFR part 1301 contains provisions applicable to the program administration and grants administration under the Head Start Act, as amended. These provisions specify the requirements for grantee agencies for insurance and bonding, the submission of audits, matching of federal funds, accounting systems and certifications and other provisions applicable to personnel managements.

Respondents: Head Start and Early Head Start grantees

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Information Collections	2,700	1	2	5,400

Estimated Total Annual Burden Hours: 5,400.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–7285, *Email: OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–5600 Filed 3–7–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0553]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Potential Tobacco Product Violations Reporting Form

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by April 9, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Potential Tobacco Product Violations Reporting Form.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Potential Tobacco Product Violations Reporting Form—(OMB Control Number 0910–NEW)

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321 *et. seq.*) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

FDA is requesting OMB approval for a new collection of information to accept consumer and other stakeholder feedback and notification of potential tobacco violations of the FD&C Act, as amended by the Tobacco Control Act.

As part of its enforcement strategy, FDA created a Tobacco Call Center (with a toll-free number: 1–877–CTP–1373) to accept information from the public about violations of the Tobacco Control Act. Callers are able to report potential violations of the Tobacco Control Act, and FDA may conduct targeted followup investigation based on information received. When callers report a violation, the caller will be asked to provide as much information as they can recall, including: The date the potential violation happened, the product type (e.g., cigarette, smokeless, roll-your-own, etc.), tobacco brand, type of potentially violative promotional materials, potential violation type, who potentially violated, and the name, address, phone number, and email address of the potential violator. The caller will also be asked to list the potential violator's Web site (if available), describe the potential violation, and provide any additional files or information pertinent to the potential violation. FDA has developed a form that will be used to solicit this information from the caller (Form FDA 3779, Potential Tobacco Product Violations Reporting), which is expected to eventually replace current Form FDA 3734 for Cigarette Flavor Ban Violations. This new form will be posted on FDA's Web site, and information may be submitted by filling out the form online (or the public can request a copy of Form FDA 3779 by contacting the Center for Tobacco Products (CTP)). In addition, FDA has developed a smartphone application for use with mobile devices (i.e., iPhones, Android) to allow consumers to report potential violations to FDA via their smartphone. Others may simply choose to send a letter to FDA with their information. In summary, the public and interested stakeholders will be able to report information regarding possible violations of the Tobacco Control Act through the following methods: Calling the Tobacco Call Center using CTP's toll-free number, using a fill-able form found on FDA's Web site, using FDA's tobacco violation reporting smartphone application, and sending a letter to FDA's Center for Tobacco Products.

In the **Federal Register** of August 22, 2011 (76 FR 52333), FDA published a 60-day notice requesting public comment on this proposed collection of information. FDA received 24 comment submissions, which included over 60

comments embedded. The comments have been summarized into four PRA-related areas as follows.

(Comment 1) FDA received several comments that said the Tobacco Control Act does not include a provision directing FDA to request or accept information on potential tobacco product violations from the public and other stakeholder groups. The comments stated that the public and other stakeholder groups have not been trained to inspect retail tobacco operations, have not been trained to recognize or report tobacco product violations, and are not able to verify what does or does not constitute compliance with the Tobacco Control Act. Commenters also stated that a retailer of tobacco products could be targeted by overzealous stakeholders and unfairly earmarked by FDA for future inspections.

(Response) FDA disagrees with this comment. The Tobacco Control Act amended the FD&C Act by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. This includes broad authority to enforce the provisions of the Tobacco Control Act.

FDA is requesting OMB approval for a new collection of information to accept consumer and other stakeholder feedback and notification of potential violations of the FD&C Act, as amended by the Tobacco Control Act (TCA). This collection of information falls under FDA's responsibilities to monitor compliance with and enforce the TCA.

In addition, the proposed tobacco violation form does not require respondents to verify compliance with or violations of the TCA. Instead, the submitted information will be one source of information to help FDA identify potential areas for further Agency inquiry.

(Comment 2) FDA received several comments that stated that the form is contrary to and may violate Executive Order 13563, ''Improving Regulation and Regulatory Review,'' the intent of which is to eliminate unnecessary and wasteful government regulations.

(Response) FDA disagrees with this comment. Executive Order 13563 pertains to unnecessary and wasteful regulations. This form is not a regulation but an extension of the means that the public and stakeholders have to voluntarily report potential tobacco violations and events to FDA. Current methods of reporting are FDA's toll-free hotline number (1–877–CTP–1373), email (*AskCTP@fda.hhs.gov*), and Form FDA 3734. This form is not an inspection reporting form but is another, perhaps easier, way for the public and stakeholders to report information to FDA. No information received from the form will be forwarded to inspectors unless the information is deemed credible by FDA.

(Comment 3) Several comments questioned the burden to complete the form and the methodology used to compute total responses expected through the use of this form. Commenters also stated that the form is overly broad and includes some categories of tobacco products currently not regulated by FDA under the Tobacco Control Act. Commenters also stated that the form was redundant in places, while one commenter liked the form and encouraged FDA to make the public aware that the form exists.

(Response) FDA generally agrees with these comments, except with regard to the redundancy of the form. The time to gather information and complete the form has been tested internally to take no longer than 10 minutes. However, due to the comments received, FDA is revising the burden estimate upward to indicate that the form or mobile application will take 15 minutes to complete.

With regard to the form being overly broad, the Potential Tobacco Product Violations Reporting Form has been revised to ensure that it only lists currently regulated tobacco products and possible violations under the TCA for those products. Most notably, the word ''other'' has been removed from some of the questions on the form to reduce confusion about which tobacco products are regulated by FDA. The layout of the form has also been adjusted to make it easier for the public to voluntarily submit information to FDA. The intent of the form is not to gather establishment inspection information like that collected by Federal, State, or local inspectors of tobacco facilities but to offer another means of contacting FDA about tobacco-related events and potential violations, such as that offered by the 1–877–CTP–1373 toll-free hotline and the *AskCTP@fda.hhs.gov* email address. The use of the form is voluntary and is not designed to target specific establishments or deputize the public as inspectors for identifying specific violations of the TCA.

With regard to the comments addressing the methodology for computing the burden, FDA has based this estimate on information received from several flavored cigarette reports, reports currently received from FDA's toll-free hotline and email address, and FDA experience. If the number of actual reports received is either too high or low, FDA will either correct the collection via a revision of the information collection or during its next renewal submission to OMB. Upon receiving OMB approval for the form and the collection of information, FDA will place the form on its complaint Web site and will advertise its location to the public.

With regard to the redundancy of fields of information on the form, FDA has reviewed all aspects of the form and mobile application carefully and has eliminated any redundant fields on the form.

(Comment 4) Several comments indicated that they thought the form is being used by the public and stakeholders as an inspection report to police or target tobacco retailers and the public, and that stakeholders have not been thoroughly or extensively trained with the training provided to FDA's Federal, State, and local inspectors. In addition to the lack of training, commenters also wondered what type of corrective action would or could be taken against a person or entity who files a false or inaccurate report against a retailer.

(Response) FDA's intent in creating this form and mobile application is not to target retailers but to provide the public and stakeholders with another means to report tobacco-related events, concerns, or potential violations, much like the information that is currently collected using the existing Center for Tobacco Products toll-free hotline telephone number, email address, and Form FDA 3774. The Web-based, paper, and mobile application form may allow the Agency to become better informed about certain tobacco-related topics and will provide the public and other stakeholders with an easier and possibly more efficient way to submit potential violation and event information to FDA. Information received by FDA from this form will not be forwarded to an inspector unless FDA deems the information is credible and worth further investigation. The information provided by this form will also help FDA more efficiently use its inspection resources, based on credible information provided by the public and stakeholders on potential events.

With regard to the type of corrective action taken against persons falsifying information submitted on these forms, FDA will scrutinize each submission carefully. Only forms containing information which are determined to be worthy of further investigation will be submitted to investigators for further review. Because this form is voluntary,

submission of the information by the public and stakeholders does not guarantee that an investigation against a retailer will be triggered, and FDA will work to ensure that no specific retailer or supplier is unfairly targeted.

To clarify that Form FDA 3779 is not an inspection report, FDA is amending the title of Form FDA 3779 to ''Potential Tobacco Product Violations Reporting.'' FDA is making this change to reflect that the form is voluntary, that the form is intended to be a means for the public to submit information to FDA regarding possible violations of the laws that it enforces, and that a Form FDA 3779 submission is not, by itself, enough to warrant further FDA action.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity and Form FDA 3779	Number of respondents	Annual frequency per response	Total annual responses	Average burden per response	Total hours
Reporting potential violations of the FD&C Act, as amended by the Tobacco Control Act, by telephone, Internet or paper form, smartphone application or email	1,000	1	1,000	0.25	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that submitting the information (by phone, Internet form, paper form by mail, smartphone application, or email) will take 15 minutes per response. Since a similar type of reporting went into effect for the cigarette flavor ban, FDA has received several reports via the Internet or email. Based on the rate of reporting for the cigarette flavor ban, reports received from FDA's toll-free telephone number and email address, and FDA experience, FDA estimates the number of annual respondents to this collection of information will be 1,000, who will each submit 1 report by phone, Internet form, paper form, smartphone application, or email. Each report is expected to take 15 minutes to complete and submit, therefore, total burden hours for this collection of information is estimated to be 250 hours (1,000 responses × 0.25 hours per response). Because of the variety of products regulated by FDA under the authority of the FD&C Act, as amended by the Tobacco Control Act, FDA expects the rate of calls and reports received to remain constant over the next 3 years.

Dated: March 5, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–5634 Filed 3–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0197]

Agency Information Collection Activities; Proposed Collection; Comment Request; Emergency Shortages Data Collection System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Emergency Shortages Data Collection System.

DATES: Submit either electronic or written comments on the collection of information by May 7, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Emergency Shortages Data Collection System—Section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (OMB Control Number 0910–0491)—Extension

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)), the Commissioner of Food and Drugs is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA. Subsequent to the events of September 11, 2001, and as part of broader

counterterrorism and emergency preparedness activities, FDA's Center for Devices and Radiological Health (CDRH) began developing operational plans and interventions that would enable CDRH to anticipate and respond to medical device shortages that might arise in the context of Federally declared disasters/emergencies or regulatory actions. In particular, CDRH identified the need to acquire and maintain detailed data on domestic inventory, manufacturing capabilities, distribution plans, and raw material constraints for medical devices that would be in high demand, and/or would be vulnerable to shortages in specific disaster/emergency situations or following specific regulatory actions. Such data could support prospective risk assessment, help inform risk mitigation strategies, and support real-time decisionmaking by HHS during actual emergencies or emergency preparedness exercises.

FDA developed ''The Emergency Medical Device Shortages Program Survey'' in 2002 to support the acquisition of such data from medical device manufacturers. In 2004, CDRH changed the process for the data collection, and the electronic database in which the data were stored was formally renamed the ''Emergency Shortages Data Collection System'' (ESDCS). Recognizing that some of the data collected may be commercially confidential, access to the ESDCS is restricted to members of the CDRH Emergency Shortage Team (EST) and senior management with a need-to-know. At this time, the need-to-know senior management personnel are limited to two senior managers. Further, the data are used by this defined group only for decisionmaking and planning in the context of a Federally declared disaster/emergency, an official emergency preparedness exercise, or a potential public health risk posed by non-disaster-related device shortage.

The data procurement process consists of an initial scripted telephone call to a regulatory officer at a registered manufacturer of one or more key medical devices tracked in the ESDCS. In this initial call, the EST member describes the intent and goals of the data collection effort and makes the specific data request. After the initial call, one or more additional followup calls and/or electronic mail correspondence may be required to verify/validate data sent from the manufacturer, confirm receipt, and/or request additional detail. Although the regulatory officer is the agent who the EST member initially contacts, regulatory officers may designate an alternate representative within their organization to correspond subsequently with the CDRH EST member who is collecting or verifying/validating the data.

Because of the dynamic nature of the medical device industry, particularly with respect to specific product lines, manufacturing capabilities, and raw material/subcomponent sourcing, it is necessary to update the data in the ESDCS at regular intervals. The EST makes such updates on a regular basis, but makes efforts to limit the frequency of outreach to a specific manufacturer to no more than every 4 months.

The ESDCS will only include those medical devices for which there will likely be high demand during a specific emergency/disaster, or for which there are sufficiently small numbers of manufacturers such that disruption of manufacture or loss of one or more of these manufacturers would create a shortage.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Section of the FD&C Act	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
903(d)(2)	125	3	375	0.5	188

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based the burden estimates in table 1 of this document on past experience with direct contact with the medical device manufacturers and anticipated changes in the medical device manufacturing patterns for the specific devices being monitored. FDA estimates that approximately 125 manufacturers would be contacted by telephone and/or electronic mail 3 times per year either to obtain primary data or to verify/validate data. Because the requested data represent data elements that are monitored or tracked by manufacturers as part of routine inventory management activities, it is anticipated that for most manufacturers, the estimated time required of manufacturers to complete the data request will not exceed 30 minutes per request cycle.

Dated: March 2, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–5633 Filed 3–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0403]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On August 30, 2011, the Agency submitted a proposed collection of information entitled '' Substantiation for Dietary Supplement Claims Made Under the Federal Food, Drug, and Cosmetic Act'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB has now approved the information collection and has assigned OMB control number 0910–0626. The approval expires on February 28, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 2, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–5632 Filed 3–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0112]

Guidance for Industry on Chemistry, Manufacturing, and Controls Information—Fermentation-Derived Intermediates, Drug Substances, and Related Drug Products for Veterinary Medicinal Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry #216 entitled ''Chemistry, Manufacturing, and Controls (CMC) Information—Fermentation-Derived Intermediates, Drug Substances, and Related Drug Products for Veterinary Medicinal Use.''

The purpose of this document is to provide recommendations on what documentation to submit to support the CMC information for fermentation-derived intermediates, drug substances, and related drug products for veterinary medicinal use.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael J. Popek, Center for Veterinary Medicine (HFV–144), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8269, email: *michael.popek@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 14, 2011 (76 FR 13629), FDA published the notice of availability for a draft guidance entitled ''Chemistry, Manufacturing, and Controls (CMC) Information—Fermentation-Derived Intermediates, Drug Substances, and Related Drug Products for Veterinary Medicinal Use'' giving interested persons until May 30, 2011, to comment on the draft guidance. FDA received one comment on the draft guidance. No substantive changes were made in finalizing this guidance document.

The guidance announced in this notice finalizes the draft guidance dated March 14, 2012.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance have been approved under OMB control number 0910–0032.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: March 5, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–5629 Filed 3–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0091]

Guidance for Industry: Testing for Salmonella Species in Human Foods and Direct-Human-Contact Animal Foods; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a guidance entitled ''Guidance for Industry: Testing for *Salmonella* Species in Human Foods and Direct-Human-Contact Animal Foods.'' The document provides guidance to firms that manufacture, process, pack, or hold human foods or direct-human-contact animal foods intended for distribution to consumers, institutions, or food processors. This guidance does not apply to egg producers and other persons who are covered by FDA's final rule ''Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation.'' The guidance addresses testing procedures for *Salmonella* species (spp.) in human foods (except shell eggs) and direct-human-contact animal foods, and the interpretation of test results, when the presence of *Salmonella* spp. in the food may render the food injurious to human health.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition, (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the

SUPPLEMENTARY INFORMATION section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2022.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 23, 2011 (76 FR 16425), FDA made available a draft guidance entitled ''Testing for *Salmonella* Species in Human Foods and Direct-Human-Contact Animal Foods'' and gave interested parties an opportunity to submit comments by June 21, 2011. The Agency reviewed and evaluated these comments and has modified the guidance where appropriate.

This guidance is intended for firms that manufacture, process, pack, or hold human foods or direct-human-contact animal foods intended for distribution to consumers, institutions, or food processors. The guidance does not apply to egg producers and other persons who are covered by FDA's final rule ''Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation'' (21 CFR part 118; the shell egg final rule). The guidance addresses testing procedures for *Salmonella* spp. in human foods (except shell eggs) and direct-human-contact animal foods, and the interpretation of test results, when the presence of *Salmonella* spp. in the food may render the food injurious to human health. FDA issued separate guidances in December 2011 and July 2011, respectively, entitled ''Guidance for Industry: Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage and Transportation,'' which provides guidance to egg producers on how to comply with certain provisions contained in the shell egg final rule, including provisions for environmental and egg testing for *Salmonella* Enteritidis; and ''Draft Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation,'' which responds to questions FDA has received on the shell egg final rule since its publication and includes guidance on environmental and egg testing for *Salmonella* Enteritidis.

II. Significance of Guidance

The final guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on testing for *Salmonella* spp. in human foods and direct-human-contact animal foods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the guidance. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Always access an FDA document using the FDA Web site listed previously to find the most current version of the guidance.

Dated: March 5, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–5628 Filed 3–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, March 28, 2012, 4 p.m. to March 29, 2012, 8 p.m., Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on January 17, 2012, 77 FR 2304.

This meeting will now be held at 5635 Fishers Lane, Rockville MD 20852. The meeting is closed to the public.

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 2012–5683 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict application reviews—Biosciences.

Date: March 26, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA/NIH, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5680 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict application reviews Treatment, Epidemiology & Prevention.

Date: April 6, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA/NIH, 5635 Fishers Lane, Rockville, MD 20855, (Telephone Conference Call).

Contact Person: RANGA SRINIVAS, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5679 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Development of iPS cell lines.

Date: March 26, 2012.

Time: 4 p.m. to 7 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947, *mintzerk@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5678 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; A Low Molecular Weight Thyroid-Stimulating Hormone Receptor Agonist for Thyroid Cancer (SBIR Contract)

Date: March 28, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: ;March 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5677 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the National Institute of Child Health and Human Development Special Emphasis Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Neural Interfaces: Improving Functional Outcomes.

Date: March 22, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call). *Contact Person:* Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, Md 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5676 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–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 (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Global Mental Health Hubs.

Date: April 16, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Marina Broitman, Ph.D, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5705 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Autism Center of Excellence: Network.

Date: March 30, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David H. Weinberg, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 executive blvd., Room 5B01, Rockville, MD 20852, 301–435–6973, *David.Weinberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5702 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Chronic Disease Epidemiology.

Date: March 28–29, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George Vogler, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, Bethesda, MD 20892, 301–435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Nanoimaging Center for Biomedicine.

Date: April 11–13, 2012.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Omaha, 1616 Dodge Street, Omaha, NE 68102.

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RM–11–012: Economics of Preventive Services.

Date: April 12, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Kathy Salaita, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–806–8250, *salaitak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5700 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Reprogramming, Aging and Alzheimer's Disease.

Date: March 27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5699 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Multi-Analyte Technologies for Cancer Biomarkers.

Date: March 26–28, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8050A, MSC 8329, Bethesda, MD 20852, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Process Analytic Technologies.

Date: April 3, 2012.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Thomas M. Vollberg, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892, 301–594–9582, *vollbert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Prevention Research Small Grant Program (R03).

Date: April 9–10, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Conference & Center, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Clifford W Schweinfest, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8050a, Bethesda, MD 20892–8329, 301–402–9415, *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Immunotherapy.

Date: April 10, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Blvd., Room 7073, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7073, Bethesda, MD 20892, 301–435–1822, *choe@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Alternative Affinity Capture Reagents for Cancer Proteomics.

Date: April 25, 2012.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health, 6116 Executive Blvd., Room 611, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8146, Bethesda, MD 20892–8329, 301–594–1566, *twinters@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5695 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Topics in Development, Signaling, and Disease.

Date: April 3, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5692 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ZHD1 DSR–Z 54.

Date: April 5, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, (301) 435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 2, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5691 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Diabetes Mellitus Interagency Coordinating Committee; Notice of Meeting

The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on April 5, 2012, from 8:30 a.m. to 11:30 a.m. at the Neuroscience Building, Room C, 6001 Executive Boulevard, Rockville, MD 20852. The meeting is open to the public but attendance is limited to space available. Non-federal individuals planning to attend the meeting should notify the Contact Person listed on this notice at least 2 days prior to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

The DMICC facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The April 5, 2012, DMICC meeting will discuss ''Healthy People 2010 Progress Report and Healthy People 2020 Objectives.''

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the

meeting, oral comments will be allowed on a first come, first serve basis.

A registration link and information about the DMICC meeting will be available on the DMICC Web site: www.diabetescommittee.gov . Members of the public who would like to receive email notification about future DMICC meetings could register on a listserv available on the same Web site.

For further information concerning this meeting contact Dr. Sanford Garfield, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 654, MSC 5460, Bethesda, MD 20892–5460, Telephone: 301- 594–8803 Fax: 301–402–6271, Email: dmicc@mail.nih.gov.

Dated February 28, 2012.

Sanford Garfield,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. 2012–5684 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Innovation for HIV Vaccine Discovery (R01).

Date: April 3, 2012.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Rm 3134, Bethesda, MD 20892–7616, 301–435–2766, *rathored@mail.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Innovation for HIV Vaccine Discovery (R01).

Date: April 25, 2012.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Rm 3134, Bethesda, MD 20892–7616, 301–435–2766, *rathored@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5710 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncological Sciences.

Date: March 26–29, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Inese Z. Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biological Chemistry and Macromolecular Biophysics A.

Date: April 3–4, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: April 4, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Hilary D. Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mitochondria, Neuronal Injury and Neurodegeneration.

Date: April 5, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: March 1, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5708 Filed 3–7–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5630–N–01]

Rental Assistance Demonstration: Notice of Web Availability and Request for Comments

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

ACTION: Notice.

SUMMARY: The Rental Assistance Demonstration (RAD) provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by public housing agencies (PHAs) and owners to private debt and equity to address immediate and long-term capital needs. RAD is also designed to test the extent to which residents have increased housing choices after the conversion, and the overall impact on the subject properties. This notice announces that HUD has posted on its Web site a demonstration program notice (Program Notice) entitled ''Rental Assistance Demonstration—Partial Implementation and Request for Comments.'' Prior to the issuance of the final program notice that will provide for full implementation of RAD, HUD welcomes public comment on the entirety of the Program Notice and particularly seeks comments on elements highlighted in this notice.

DATES: Comment Due Date: April 9, 2012.

Effective Date: The conversion of Rent Supp and RAP properties under Section III of the Program Notice is effective on: March 8, 2012.

ADDRESSES: Interested persons are invited to submit comments on applicable parts of this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. All submissions and communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. Also, to expedite review of public comments, it is recommended commenters should organize their comments by specific topical areas and section numbers and label those areas accordingly.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please electronically direct requests for further information to this email address: *rad@hud.gov*. Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program, Department of Housing and Urban Development, 451 7th Street SW., Room 2000, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: This **Federal Register** notice announces the issuance of, and solicits public comment on, a Program Notice entitled, ''Rental Assistance Demonstration—Partial Implementation and Request for Comments,'' which is available on HUD's Web site at *www.hud.gov/rad.* The Program Notice describes, in detail, the demonstration's eligibility and selection criteria for participation, general requirements, instructions for applying for the conversion of assistance under RAD, and other relevant information about the demonstration. While HUD seeks public comment on all instructions and criteria provided in the Program Notice, the instructions and criteria applicable to the Section III of the Program Notice are effective upon issuance of the Program Notice. Following receipt and consideration of public comment, a second notice (Final Notice) will be issued with final program instructions and eligibility and selection criteria, which may include revisions to the Section III instructions and criteria.

I. Background

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012, (Pub. L. 112–55, signed November 18, 2011) (2012 Appropriations Act) allows for the conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental Assistance (RAP), and Moderate Rehabilitation (Mod Rehab) programs (collectively, covered programs) to long-term, renewable assistance under Section 8. RAD has two separate components:

- First Component. The first component of RAD allows projects funded under the public housing and Mod Rehab programs to convert to long-term Section 8 rental assistance contracts. Under this component of RAD, which is covered under Sections I and II of the Program Notice, PHAs and Mod Rehab owners may apply to HUD to convert to one of two forms of Section 8 Housing Assistance Payment (HAP) contracts: Project-based vouchers (PBVs) or project-based rental assistance (PBRA). No additional or incremental funds were authorized for this component of RAD. Therefore, PHAs and Mod Rehab owners will be required to convert assistance for projects at current subsidy levels. The 2012 Appropriations Act authorizes up to 60,000 units to convert assistance under this component, to be selected competitively. The 2012 Appropriations Act further specifies that HUD shall provide an opportunity for public comment on draft eligibility and selection criteria and on the procedures that will apply to the selection of properties that will participate in this component of the demonstration. Accordingly, these provisions will become effective after HUD has

considered all comments received on the Program Notice and publishes a final notice.

• Second Component. The second component of RAD, which is covered under Sections II and III of the Program Notice, allows owners of projects funded under the Rent Supp, RAP and Mod Rehab programs with a contract expiration or termination occurring after October 1, 2006, and no later than September 30, 2013, to convert tenant protection vouchers (TPVs) to PBVs. There is no cap on the number of units that may be converted under this component of RAD and no requirement for competitive selection. While these conversions are not subject to current funding levels for each project or a unit cap, they are subject to the availability of overall appropriated amounts for TPVs. These provisions are effective immediately; however, HUD is inviting comments on these provisions and may make changes based on its consideration of the comments. Any such changes will be announced in the Final Notice.

II. Issues Highlighted for Public Comment

HUD welcomes comments on all aspects of the demonstration. In particular, HUD is interested in receiving comments on the following components (the parenthetical references below are the relevant sections in the Program Notice posted at *www.hud.gov/rad*).

Selection Criteria (§§ 1.12, 2.3.9). HUD seeks to convert a wide range of projects under the demonstration. HUD has attempted to simplify both the submission requirements and selection procedures while encouraging the participation of a wide range of PHAs and owners in different markets and geographic areas. HUD is especially interested in encouraging PHAs and owners to use the authority granted under RAD to address the backlog of capital needs of their properties. As a result, HUD is particularly interested in receiving comments on how well the proposed selection criteria encourage these objectives to be met.

Cap on Mod Rehab Project Conversions (§ 2.3.9(A)). Both public housing and Mod Rehab properties are eligible to compete for conversion under the 60,000 unit cap in the first component of the RAD authority. However, as 60,000 units represents approximately five percent of the total public housing inventory of 1.2 million units, and the current Mod Rehab inventory is about 25,000 units, HUD believes that it is reasonable to limit the number of Mod Rehab conversions under the first component of the RAD authority to approximately five percent of the Mod Rehab inventory, or approximately 1,250 units total. Imposing such a cap on Mod Rehab conversions under this component of the RAD authority should be mitigated by the fact that Mod Rehab properties are also eligible to convert TPVs to long-term Section 8 PBVs under the second component of the demonstration authority. HUD is interested in receiving comments on how the proposed cap on Mod Rehab properties might affect prospects for effective conversion of assistance for either or both Mod Rehab and public housing properties.

Contract Rents (§§ 1.7(B)(5), 1.8(A)(5), 2.3.5(B)(2), 2.3.6(A)(3)). As RAD projects are statutorily limited to converting existing subsidy levels to new, long-term Section 8 contracts, rents for the first component of the demonstration will be set relative to current subsidy levels and PBRA and PBV program caps. Although rents levels are statutorily limited, HUD is interested in receiving comments on how policies on contract rent setting might best facilitate PHAs and owners in accessing needed capital and securing firm financing plans as discussed below.

Conversion Contingent upon Firm Financing Plan (§§ 1.13, 2.3.10). HUD is proposing a two-step process in converting assistance requiring assembly of needed financing relative to an initial commitment from HUD and then, upon approval of a firm financing plan by HUD, issuance of a Section 8 HAP contract. HUD believes that the two-step process minimizes the barriers to submitting an application and ensures that only projects that are financially viable execute a final HAP and permanently convert their form of assistance under RAD. HUD is particularly interested in receiving comments on the associated timeframes and milestones outlined in the Program Notice.

Resident Notification and Consultation. Under both components of the demonstration, PHAs and owners are required to notify and consult with tenants about their intent to apply for conversion, provide tenants the opportunity to comment on the proposed conversion, and respond to or address comments received. These and other requirements are designed to: (1) Protect tenants and ensure that they are able to meaningfully participate in the conversion process; and (2) appropriately balance the goals of preserving these properties and maximizing residents' housing choices. HUD invites comments on whether the notice effectively achieves these objectives.

Rent Adjustments. Converted projects under the first component of the demonstration will have contract rents adjusted annually only by HUD's Operating Cost Adjustment Factor (OCAF). As a result, PHAs and Mod Rehab owners that are considering applying for participation under the first component of the demonstration must be reasonably confident that existing funding committed to the project is sufficient to meet project operating expenses and contingencies for the term of the initial contract. In addition to offering annual OCAF adjustments, HUD is interested in receiving comments on other actions it might facilitate that can best assure high-quality management and maintenance of properties that convert assistance under RAD.

Addressing Capital Needs and Encouraging Preservation (§§ 1.5, 2.3.3). Many public housing and Mod Rehab properties require substantial private debt and/or equity capital to address their capital repair needs and preserve their assets over time. Other projects may not require additional financing but instead need to capitalize a replacement reserve account matched to a property's anticipated capital needs to ensure long-term viability. The demonstration allows for both types of projects, but favors projects with higher capital needs given the goal of testing conversion as a strategy for providing access to private debt and equity to address the backlog of capital needs. The demonstration also includes a ranking factor to encourage PHAs and owners to employ green building rehabilitation and operation techniques on converted properties. HUD is interested in receiving comments on how well the proposed rehabilitation-related ranking factors encourage these objectives.

Public Housing Mixed-Finance Projects (§§ 1.5, 1.10.3, 1.12(B)). While a central premise of the demonstration is that Section 8 provides a more stable platform for public housing, and HUD is aware that the existing Mixed-Finance inventory could benefit from converting assistance to Section 8 contracts, HUD believes the public housing properties that have not benefited from the Mixed Finance program should have greater access to RAD's limited authority. Accordingly, HUD will limit eligibility to Mixed-Finance projects with a Date of Full Availability prior to July 1, 2002, and reserves the right to limit the number of awards made to eligible Mixed-Finance projects. HUD is particularly interested in receiving comments on criteria that HUD might employ in attempting to reasonably limit the number of Mixed-Finance

transactions to those most consistent with the demonstration's primary purpose of enabling PHAs to access needed financing to address their capital repair needs.

Waivers (§§ 1.6, 2.3.5, 2.3.6, 3.5). To carry out the goals of the demonstration, the 2012 Appropriations Act provides HUD with statutory and regulatory waiver authority. Rather than allow each PHA, Mod Rehab, Rent Supp or RAP owner to request specific waivers that would be extraordinarily difficult to administer on an individualized basis, HUD lists in each section of the Program Notice related to public housing, Mod Rehab, Rent Supp and RAP the waivers that are applicable to the specific type of conversions being undertaken. HUD invites comments on the range of waivers proposed to be offered and the need, if any, for additional waivers to facilitate successful RAD conversions by property type.

No Partial Project Conversions. For administrative reasons, HUD will accept applications only for complete project conversions (excluding *de minimis* unit reductions as defined in Section I of the Program Notice). For example, if a PHA has a 200-unit project that consists of 100 family units and 100 elderly units on separate sites, and wants only to convert only the family units, the PHA would first need to seek approval from HUD independent and in advance of a RAD application to divide the project into two different projects. Procedures for changing project groupings can be found in PIH Notice 2007–28 (which is available for download at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips*). HUD is particularly interested in receiving comments on any potential unintended consequences of this policy.

Choice-Mobility (§§ 1.8.12, 1.12(D)(2), 2.3.6.8, 2.3.9(C)(2)). HUD's goal is to provide all residents of converted projects under both the first and second components of the demonstration with viable options to obtain a Housing Choice Voucher and move from a converted property as they deem in their best interests, i.e., to offer them choice and mobility after a reasonable tenure. For projects converting assistance to PBVs, existing PBV choice requirements specified under section 8(o)(13)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13)(E)) will apply. For projects converting assistance to PBRA, choice-mobility options will be required to be made available consistent with Sections 1.8.12 and 2.3.6.8. HUD will further offer ranking factor points to encourage applicants to form partnerships to secure the needed turnover vouchers necessary to support the choice-mobility requirement where none is readily available. HUD is particularly interested in receiving comments on how the indicated choice-mobility objectives can best be achieved in the demonstration through the indicated ranking factors or other actions that it might facilitate.

Demonstration Design. HUD will be evaluating the demonstration based on the goals detailed in the notice. In that context, HUD solicits public comments on the parameters of the current design and how it serves those goals. For example, the demonstration creates two fairly distinct program options that PHAs can choose from under the first component of RAD: PBRA or PBVs. HUD is interested in the reasons why a PHA may choose to convert public housing units to PBRA rather than PBVs or vice versa. HUD seeks feedback on whether there are additional modifications to the design to maximize the opportunity for learning and the long-term viability of converted properties.

III. Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Dated: March 5, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing,

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–5626 Filed 3–7–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[Docket No. ONRR–2012–0002]

Public Listening Sessions To Obtain Input on the Multi-Stakeholder Group Tasked With the Implementation of the Extractive Industries Transparency Initiative

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) announces four public listening sessions to receive comments regarding a multi-stakeholder group to implement the Extractive Industries Transparency Initiative (EITI).

DATES: The public listening session dates and cities are:

Session 1—March 19, 2012 (1–3 p.m. central time) in St. Louis, Missouri.

Session 2—March 21, 2012 (1–3 p.m. mountain time) in Denver, Colorado.

Session 3—March 28, 2012 (1–3 p.m. mountain time) in Houston, TX.

Session 4—March 29, 2012 (1–3 p.m. eastern time) in Washington, DC.

ADDRESSES: The public listening session locations are:

Session 1—Renaissance St. Louis Grand Hotel, 800 Washington Ave., St. Louis, Missouri 63101, telephone number (314) 418–5820.

Session 2— Denver Marriott City Center, 1701 California St., Denver, Colorado 80202, telephone number (303) 297–1300.

Session 3—Hilton Houston Post Oak, 2001 Post Oak Boulevard, Houston, Texas 77056, telephone number (713) 961–9300.

Session 4—Main Interior Building, 1849 C Street, NW., Washington DC 20240 (Yates Auditorium), telephone number (202) 254–5573.

FOR FURTHER INFORMATION CONTACT: Ben Nussdorf, telephone (202) 254–5573, fax number (202) 254–5589, email *benjamin.nussdorf@onrr.gov.*

SUPPLEMENTARY INFORMATION: On February 24th, 2012, the Department published a notice in the **Federal Register** seeking comment on the multi-stakeholder group for the Extractive Industries Transparency Initiative (74 FR 11151). In that notice, the Department stated that it would hold a series of public listening sessions to provide additional opportunities for public comment on EITI implementation in the United States.

In September 2011, President Barack Obama announced the United States' commitment to participate in the Extractive Industries Transparency

Initiative. EITI is a signature initiative of the U.S. national action plan for the international Open Government Partnership and offers a voluntary framework for governments and companies to publicly disclose in parallel the revenues paid and received for extraction of oil, gas and minerals owned by the state. The design of each framework is country-specific, and is developed through a multi-year, consensus based process by a multi-stakeholder group comprised of government, industry and civil society. Thirty-five countries are in various stages of implementing EITI, most of them developing countries.

On October 25, President Obama named Secretary of the Interior Ken Salazar as the U.S. Senior Official responsible for implementing the United States Extractive Industries Transparency Initiative (USEITI). In response, Secretary Salazar posted a White House blog the same day, committing to work with industry and civil society to implement USEITI.

EITI will strengthen relationships among the U.S. government, industry, and civil society; deliver a more transparent, participatory, and collaborative government; promote accountability to help ensure the full and fair return to the American people for the use of its public resources; and enable the U.S. to lead by example internationally on transparency and good governance. For further information on EITI, please visit the Department's EITI Web page at *http://www.doi.gov/EITI.*

Accordingly, the Department of the Interior is seeking public comment and recommendations on the following specific issues:

- The EITI requires a multi-stakeholder group to be formed to oversee implementation. Who are the key sectors or stakeholders that need to be involved in the multi-stakeholder group?
- How best can a balance of interests and perspectives, be achieved in the formation of the multi-stakeholder group?
- In your opinion, what are the key attributes of both a successful and high functioning multi-stakeholder group and the successful implementation of USEITI?
- What key concerns, if any, do you have about implementing the USEITI process?

We encourage stakeholders and members of the public to participate. The listening sessions will be open to the public without advance registration; however, attendance may be limited to the space available at each venue. For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: March 2, 2012.

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2012–5668 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2012–N030; FF09F21000, FXHC11240900000T5, 123]

John H. Chafee Coastal Barrier Resources System; Lee County, FL, and Newport County, RI; Availability of Draft Maps and Request for Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of two John H. Chafee Coastal Barrier Resources System (CBRS) draft revised maps for public review and comment. The first map, dated January 10, 2012, is for two CBRS units located in Lee County, Florida. The second map, dated September 30, 2009, is for four CBRS units located in Newport County, Rhode Island.

DATES: To ensure consideration, we must receive your written comments by April 23, 2012.

ADDRESSES: Mail or hand-deliver (during normal business hours) comments to Katie Niemi, Coastal Barriers Coordinator, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 860A, Arlington, VA 22203, or send comments by electronic mail (email) to *CBRAcomments@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

Coastal barriers are typically elongated, narrow landforms located at the interface of land and sea. Coastal barriers provide important habitat for fish and wildlife and serve as the mainland's first line of defense against the impacts of severe storms. With the passage of the Coastal Barrier Resources Act (CBRA) in 1982 (Pub. L. 97–348), Congress recognized that certain actions and programs of the Federal Government have historically subsidized and encouraged development on coastal barriers and have resulted in the loss of valuable natural resources; threats to human life, health, and property; and the expenditure of millions of tax dollars to build structures and infrastructure and then rebuild them again after damaging storms. The CBRA established the CBRS, a defined set of 186 geographic units, encompassing approximately 453,000 acres, of undeveloped lands and associated aquatic habitat along the Atlantic and Gulf of Mexico coasts. Most new Federal expenditures and financial assistance that have the effect of encouraging development are prohibited within the CBRS. Development can still occur within the CBRS provided that private developers or other non-Federal parties bear the full cost instead of the American taxpayers. The CBRS was expanded by the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591) to include additional areas along the Atlantic and Gulf of Mexico coasts as well as areas along the Great Lakes, Puerto Rico, and the U.S. Virgin Islands coasts. The CBRS now comprises 857 units encompassing approximately 3.1 million acres of coastal barrier lands and associated aquatic habitat. These areas are depicted on a series of maps entitled ''John H. Chafee Coastal Barrier Resources System.''

The CBRS includes two types of units, System units and Otherwise Protected Areas (OPAs). System units generally comprise private lands that were relatively undeveloped at the time of their designation within the CBRS. Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within System units. OPAs generally comprise lands established under Federal, State, or local law or held by a qualified organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. OPAs are denoted with a ''P'' at the end of the unit number. The only Federal spending prohibition within OPAs is the prohibition on Federal flood insurance.

The Secretary of the Interior (Secretary), through the Service, is responsible for administering the CBRA, which includes maintaining the official maps of the CBRS; consulting with Federal agencies that propose to spend funds within the CBRS; preparing draft maps that update and correct existing maps; and making recommendations to Congress regarding proposed changes to the CBRS. Aside from three minor

exceptions, only Congress—through new legislation—can modify the maps of the CBRS to add or remove land. These exceptions include: (1) The CBRA 5-year review requirement, which considers only changes that have occurred to the CBRS by natural forces such as erosion and accretion; (2) voluntary additions to the CBRS by property owners; and (3) additions of excess Federal property to the CBRS. The proposed changes described in this notice, including any additions to and deletions from the CBRS, will become effective only if enacted by Congress through new legislation.

Proposed Changes to the John H. Chafee Coastal Barrier Resources System in Florida

The Service has prepared a comprehensively revised map for Gasparilla Island Units FL–70/FL–70P, dated January 10, 2012, in response to a request from the House of Representatives Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs (Subcommittee). Legislation was introduced in the 112th Congress (H.R. 2154) to replace the existing map for Gasparilla Island Unit FL–70P with a revised map. The Service testified before the Subcommittee on October 25, 2011, and did not take a position on H.R. 2154 because the Service had not yet conducted a comprehensive review of the area at the time. The Service receives numerous requests from property owners and other interested parties who seek to remove lands from the CBRS. Before the Service can make an informed recommendation to the Congress concerning whether a change to a CBRS unit is appropriate, the Service must conduct a comprehensive review of the history of the CBRS unit in question. The Service has a large backlog of requests to conduct reviews of CBRS units. These reviews are time and resource intensive, and the Service attempts to conduct them on a first-in, first-out, basis to be fair to property owners who have been waiting the longest for their area to be reviewed and potentially remapped.

Below is a summary of the proposed changes depicted on the draft map for Units FL–70/FL–70P.

The Service's draft revised map for Units FL–70/FL–70P removes approximately 6 upland acres from the CBRS and adds approximately 1,759 acres to the CBRS (including 87 acres of upland and 1,672 acres of associated aquatic habitat). The Service's assessment of 2011 aerial imagery estimates that the draft map for Units FL–70/FL–70P removes from the CBRS a total of 27 structures, including 25 privately owned homes, 1 home owned by Lee County, and 1 restaurant. The Service's assessment of 2011 aerial imagery estimates that the draft map for Units FL–70/FL–70P adds to the CBRS a total of 5 structures, including 4 park-related structures (2 maintenance sheds, 1 bathhouse/restroom, and 1 chapel) and 1 structure owned by Florida Power and Light. The draft map also adds to the CBRS an operational lighthouse owned by the U.S. Coast Guard known as the Boca Grande Rear Range Light. The map makes progress towards fulfilling a mandate in the Coastal Barrier Resources Reauthorization Act of 2006 (Pub. L. 109–226) to modernize all CBRS maps.

The proposed Unit FL–70P boundary was adjusted to more precisely follow the boundaries of Gasparilla Island State Park; remove private lands that were not intended to be part of the OPA; and add lands that are appropriate for inclusion within the OPA. At the northern end of Unit FL–70P, the boundaries were adjusted to add the adjacent Boca Grande Ballfield Site, owned by Lee County, and additional State park lands to Unit FL–70P. A new discrete segment is proposed for inclusion within Unit FL–70P to add lands owned by the Gasparilla Island Conservation and Improvement Association. This new discrete segment is located on a spit to the northeast of the State park and is connected to the main portion of Unit FL–70P by the proposed new System Unit FL–70. The draft map adds approximately 246 total acres to Unit FL–70P, including 42 acres of upland and 204 acres of associated aquatic habitat. The draft map removes approximately 6 upland acres from Unit FL–70P. The draft map also reclassifies 2 acres from OPA Unit FL–70P to System Unit FL–70, including 1 acre of upland and 1 acre of associated aquatic habitat.

Unit FL–70 is a proposed new System unit that contains undeveloped coastal barrier lands and associated aquatic habitat that are adjacent to or in the vicinity of Unit FL–70P. The proposed new unit contains parcels that are owned by Lee County, the Boca Bay Master Association, the U.S. Coast Guard, and Florida Power and Light. The Service's assessment indicates that these lands meet the CBRA definition of an ''undeveloped coastal barrier'' (Section 12 of Pub. L. 101–591), but do not meet the definition of ''otherwise protected'' that was published by the Department of the Interior in the **Federal Register** on March 4, 1985 (50 FR 8701). Although an April 2011 Lee County Future Land Use Map classifies some of these areas as conservation lands and/or environmentally critical, the Service is not aware of compelling evidence of an intent on the part of the owners to dedicate these lands for conservation or public recreation (e.g., deed restriction, conservation easement, etc.). Therefore, the Lee County, Boca Bay Master Association, U.S. Coast Guard, and Florida Power and Light parcels are proposed for inclusion within a new System unit, FL–70, instead of within the existing OPA.

CBRS areas generally include coastal barrier lands and the aquatic habitat associated with the coastal barrier. The draft map proposes the addition of aquatic habitat associated with Units FL–70/FL–70P. With the exception of the northeasternmost segment of Unit FL–70P, the associated open water sand-sharing area of Charlotte Harbor, Boca Grande, and the Gulf of Mexico is proposed for inclusion within System Unit FL–70. The open water sand-sharing area currently within OPA FL–70P (located along the Gulf of Mexico near the southern tip of Gasparilla Island) is proposed for reclassification from OPA FL–70P to System Unit FL–70. The Unit FL–70 boundary on the Charlotte Harbor side is drawn as a straight line approximately one mile landward of the farthest extent of the wetlands, which is consistent with established boundary delineation criteria (50 FR 8701). The Unit FL–70 boundary on the Gulf of Mexico side is open to include the entire sand-sharing system (normally defined by the 30-foot bathymetric contour), which is also consistent with established boundary delineation criteria (50 FR 8701, March 4, 1985).

The draft map adds approximately 1,513 total acres to Unit FL–70, including 45 acres of upland and 1,468 acres of associated aquatic habitat. The draft map also reclassifies 2 acres from OPA Unit FL–70P to System Unit FL–70 including 1 acre of upland and 1 acre of associated aquatic habitat.

Proposed Changes to the John H. Chafee Coastal Barrier Resources System in Rhode Island

The Service has prepared a comprehensively revised map dated September 30, 2009, for Sachuest Point Unit RI–04P, Easton Beach Unit RI–05P, Almy Pond Unit RI–06, and Hazards Beach Unit RI–07. The Service received a request in 2004 to review CBRS Unit RI–05P. When the Service finds a technical mapping error that warrants a change in one part of a CBRS map, we review all adjacent areas on the map to ensure that the entire map is accurate. This comprehensive approach to map revisions treats all landowners who may

be affected equitably, and it also ensures that the Service and Congress will not have to revisit the same map in the future. In accordance with this comprehensive mapping approach, the Service reviewed and revised the boundaries of Units RI–04P, RI–06, and RI–07, which are located on the same map panel as Unit RI–05P.

Legislation was introduced in the 111th Congress (H.R. 5331) that would replace the existing map for Units RI–04P, RI–05P, RI–06, and RI–07, with the revised map dated September 30, 2009. The Service testified in support of H.R. 5331 at a hearing before the Subcommittee on July 27, 2010. The 111th Congress did not enact the legislation into law. Legislation was introduced in the 112th Congress (H.R. 2027 and S. 1296) that would replace the existing map for this area with the revised map dated September 30, 2009. The Subcommittee held a hearing on H.R. 2027 on October 25, 2011, and the Service testified in support of the legislation. On February 1, 2012, the Senate passed S. 1296.

Below is a summary of the proposed changes depicted on the draft map for Units RI–04P, RI–05P, RI–06, and RI–07.

The Service's draft revised map for Units RI–04P, RI–05P, RI–06, and RI–07, removes approximately 22 acres (including 20 acres of upland and 2 acres of associated aquatic habitat) from the CBRS and adds approximately 67 acres (including 34 acres of upland and 33 acres of associated aquatic habitat) to the CBRS. The Service's assessment of 2010 aerial imagery estimates that the draft map for Units RI–04P, RI–05P, RI–06, and RI–07 removes a total of 8 structures, including 7 homes and 1 pump house and adds no structures to the CBRS. The map makes progress towards fulfilling a mandate in the Coastal Barrier Resources Reauthorization Act of 2006 (Pub. L. 109–226) to modernize all CBRS maps.

The proposed Unit RI–04P boundary was adjusted to include areas that are appropriate for inclusion within the OPA, including portions of the lands owned by the Norman Bird Sanctuary, the City of Newport Water Department, and the Town of Middletown (Second Beach). The draft map adds approximately 24 total acres to Unit RI–04P, including 14 acres of upland and 10 acres of associated aquatic habitat. The draft map removes 1 upland acre from Unit RI–04P.

The proposed Unit RI–05P boundary was adjusted to more precisely follow the boundaries of Easton Beach and Easton Pond, which are owned by the City of Newport; add public beach and park lands owned by the Town of Middletown that are appropriate for inclusion within the OPA; and remove private lands that were not intended to be part of the OPA. The draft map adds approximately 10 acres to Unit RI–05P, including 3 acres of upland and 7 acres of associated aquatic habitat. The draft map removes approximately 15 total acres from Unit RI–05P, including 14 acres of upland and 1 acre of associated aquatic habitat.

The proposed Unit RI–06 boundary was adjusted to add the remaining undeveloped portions of the privately owned Bailey's Beach; more precisely follow the wetland/upland interface around Almy Pond; and remove lands that were not intended to be part of the unit. The draft map adds approximately 7 total acres to Unit RI–06, including 3 acres of upland and 4 acres of associated aquatic habitat. The draft map removes a total of approximately 5 upland acres from Unit RI–06.

The proposed Unit RI–07 boundary was adjusted to include all of the privately owned Gooseberry Beach and most of the privately owned Hazards Beach; more precisely follow the wetland/upland interface around Lily Pond; and include a parcel that the Audubon Society of Rhode Island has voluntarily requested be added to the CBRS as a System unit. The offshore boundaries have been lengthened to clarify that Gooseberry Island is included in the unit. The draft map adds approximately 26 total acres to Unit RI–07, including 14 acres of upland and 12 acres of associated aquatic habitat. The draft map removes 1 acre of associated aquatic habitat from Unit RI–07.

Proposed Additions to the John H. Chafee Coastal Barrier Resources System

The draft revised maps for Units FL–70, FL–70P, RI–04P, RI–05P, RI–06, and RI–07 propose additions to the CBRS that are consistent with a directive in Section 4 of Public Law 109–226 concerning recommendations for expansion of the CBRS. The proposed boundaries depicted on the draft maps for Florida and Rhode Island are based upon the best data available to the Service at the time the draft maps were created. Our assessment indicated that any new areas proposed for addition to the CBRS were relatively undeveloped at the time the draft maps were created.

Section 2 of the Coastal Barrier Resources Reauthorization Act of 2000 (Pub. L. 106–514) codified the following guidelines for what the Secretary shall consider when making recommendations to the Congress regarding the addition of any area to the CBRS and in determining whether, at the time of inclusion of a System unit within the CBRS, a coastal barrier is undeveloped: (1) The density of development is less than one structure per 5 acres of land above mean high tide; and (2) there is existing infrastructure consisting of a road, with a reinforced road bed, to each lot or building site in the area; a wastewater disposal system sufficient to serve each lot or building site in the area; electric service for each lot or building site in the area; and a fresh water supply for each lot or building site in the area.

If, upon review of the draft maps for Florida and Rhode Island, interested parties find that any areas proposed for addition to the CBRS currently exceed the development threshold established by Section 2 of Public Law 106–514, they may submit supporting documentation of such development to the Service during this public comment period. For any areas proposed for addition to the CBRS on the draft map, we will consider the density of development and level of infrastructure on the ground as of the close of the comment period on the date listed in the DATES section of this notice.

Request for Comments

We invite the public to review and comment on the draft revised map dated January 10, 2012, for CBRS Units FL–70/FL–70P and the draft revised map dated September 30, 2009, for CBRS Units RI–04P, RI–05P, RI–06, and RI–07. The Service is specifically notifying the following stakeholders concerning the availability of the draft revised maps: the Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the Senate and House of Representatives for the potentially affected areas; the Governors of Florida and Rhode Island; Federal, State, and local officials; and nongovernmental organizations.

Interested parties may submit written comments and accompanying data to the individual and location identified in the **ADDRESSES** section above. The Service will also accept digital Geographic Information System (GIS) data files that are accompanied by written comments. Comments regarding specific units should reference the appropriate CBRS unit number and unit name. We must receive comments on or before the date listed in the **DATES** section of this document.

Following the close of the comment period on the date listed in the **DATES** section of this document, we will

review all comments received on the draft maps and we will make adjustments to the draft maps, as appropriate, based on information received through public comments, updated aerial imagery, CBRA criteria, and objective mapping protocols. We will then prepare final recommended maps to be submitted to Congress. The final recommended maps will become effective only if they are enacted by Congress through new legislation.

Availability of Draft Maps and Related Information

The draft maps, summaries of the proposed boundary changes, and digital boundary data can be accessed and downloaded from the Service's Internet site: *http://www.fws.gov/CBRA/*. The digital boundary data are available in shapefile format for reference purposes only. The Service is not responsible for any misuse or misinterpretation of the digital boundary data.

Interested parties may also contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section above to make arrangements to view the draft maps at the Service's Washington Office. In the past, draft CBRS maps were also made available for public viewing at the appropriate Service regional and field offices. Because most interested parties now access the draft maps via the Internet, the Service is no longer making the draft maps available for public viewing at its regional and field offices. Interested parties who are unable to access the draft maps via the Internet or at the Service's Washington Office may contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section above, and reasonable accommodations will be made to ensure the public's ability to view the draft maps.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 16, 2012.

Bryan Arroyo,

Assistant Director for Fisheries and Habitat Conservation.

[FR Doc. 2012–5598 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N060; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before April 9, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: San Diego Zoo Global, Escondido, CA; PRT–63409A

The applicant requests a permit to export two captive-bred Andean condors (*Vultur gryphus*)—one male and one female—for the purpose of reintroduction to enhance the survival of the species.

Applicant: Association for the Conservation of Threatened Parrots,

Inc. (ACTP) Loxahatchee, FL; PRT–62567A

The applicant requests a permit to export 15 live, captive-born St. Vincent parrots (*Amazona guildingii*) to Germany, for the purpose of enhancement of the survival of the species.

Applicant: U.S. Fish and Wildlife Service, Billings, MT; PRT–59485A

The applicant requests a permit to export 22 preserved juvenile pallid sturgeon (*Scaphirhynchus albus*) hatched at the Gavins Point National Fish Hatchery in Yankton, SD, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Houston Zoo, Inc., Houston, TX; PRT–64106A

The applicant requests a permit to export two live, captive-born red-crowned cranes (*Grus japonensis*) to Chile, for the purpose of enhancement of the survival of the species.

Applicant: Adalgisa Caccone, Yale University, New Haven, CT; PRT–209142

The applicant requests a permit to import biological samples of Galapagos giant tortoises (*Geochelone nigra*) from Galapagos, Ecuador, for the purpose of enhancement of the survival of the species through scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Morani River Ranch, Uvalde, TX; PRT–46687A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to add scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Morani River Ranch, Uvalde, TX; PRT–49112A

The applicant requests amendment of their permit authorizing interstate and foreign commerce, export, and cull to include scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*) from the captive herds maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Donald Henderson, Ijamsville, MD; PRT–061184

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Priour Brothers Ranch, Ingram, TX; PRT–672849

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to add scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Priour Brothers Ranch, Ingram, TX; PRT–707102

The applicant requests amendment of their permit authorizing interstate and foreign commerce, export, and cull, to include scimitar-horned oryx (*Oryx dammah,*), and addax (*Addax nasomaculatus*) from the captive herds maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: H. Yturria Land and Cattle Co., Brownsville, TX; PRT–179119

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to add scimitar-horned oryx (*Oryx dammah*), and addax (*Addax nasomaculatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: H. Yturria Land and Cattle Co., Brownsville, TX; PRT–179117

The applicant requests amendment of their permit authorizing interstate and foreign commerce, export, and cull to include scimitar-horned oryx (*Oryx dammah*), and addax (*Addax nasomaculatus*) from the captive herds maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Michale Soupios, East Northport, NY; PRT–042637

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for Galapagos tortoise (*Chelonoidis nigra*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John Lattimore, Bells, TX; PRT–66322A

Applicant: Robert Shemonski, Perkiomenville, PA; PRT–63858A

Applicant: Don Adams, Bloomington, IN; PRT–61190A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–5643 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N259;FXES11130100000D2–123–FF01E00000]

Draft Environmental Impact Statement for Experimental Removal of Barred Owls to Benefit Threatened Northern Spotted Owls

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; announcement of public meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft environmental impact statement for experimental removal of barred owls to benefit threatened northern spotted owls. The barred owl, a species recently established in western North America, is displacing the northern spotted owl and threatening its viability. The draft environmental impact statement analyzes a no-action alternative and seven action alternatives to experimentally determine if removing barred owls will benefit northern spotted owl populations and to inform decisions on whether to move forward with future management of barred owls. The action alternatives vary by the number and location of study areas, the type of experimental design, duration of study, and method of barred owl removal. We also announce plans for public meetings and the opening of a public comment period on the draft environmental impact statement. All

interested parties are invited to provide information, data, comments or suggestions.

DATES: To ensure consideration, we must receive comments before close of business (4:30 p.m.) on or before June 6, 2012. We will hold at least two public meetings within the range of the northern spotted owl. We will announce meeting locations and times in local newspapers and on the Internet at: *http://www.fws.gov/oregonfwo.*

ADDRESSES: To request further information, obtain a copy of the draft environmental impact statement (EIS), or submit or view written comments, please use one of the following methods and clearly indicate that your request or comment is in reference to the Barred Owl EIS:

- *Email: barredowlEIS@fws.gov.*
- *U.S. Mail:* Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266.
- *In-Person Drop-off of Comments:* Comments can be delivered in person to the above address during regular business hours (Monday through Friday, 8 a.m. to 4:30 p.m.).
- *Viewing Comments and Supporting Materials, or Picking Up a Copy of the Draft EIS:* Call 503–231–6179 to make an appointment to view received comments or pick up a copy of the draft EIS at the above address.
- *Internet:* The draft EIS is available for review and downloading at *http://www.fws.gov/oregonfwo.*
- *Fax:* Paul Henson, 503–231–6195, Attn.: Barred Owl EIS.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, Oregon Fish and Wildlife Office, at 503–231–6179. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We announce the availability of a draft environmental impact statement for experimental removal of barred owls to benefit threatened northern spotted owls. We are publishing this notice in compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA) and its implementing regulations at 40 CFR 1506.6. This continues the public involvement process for our draft EIS, which was initiated through a notice of intent to prepare an EIS in the **Federal Register** on December 10, 2009 (74 FR 65546).

The draft EIS evaluates the impacts of seven action alternatives and a no-action alternative related to: (1) Federal involvement in barred owl removal experiments, and (2) the possible issuance of one or more scientific collecting permits under the Migratory Bird Treaty Act (16 U.S.C. 703–712; MBTA) for lethal and non-lethal take of barred owls.

The northern spotted owl (*Strix occidentalis caurina*) is listed as threatened under the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act). Competition from barred owls (*Strix varia*) was identified as one of the main threats to the northern spotted owl in our 2011 Revised Northern Spotted Owl Recovery Plan (Recovery Plan) (USFWS 2011, p. III–62). To address this threat, the Recovery Plan recommended designing and implementing large-scale controlled experiments to assess the effects of barred owl removal on spotted owl site occupancy, reproduction, and survival (USFWS 2011, p. III–65). The draft EIS analyzes seven action alternatives and a no-action alternative for conducting experimental removal of barred owls and assessing the effects on spotted owl populations in specific study areas within the range of the northern spotted owl. Action areas may include from one to several study areas in western Washington, western Oregon, and northwestern California. The action alternatives vary by the number and location of study areas, the type of experimental design, duration of the study, and the method of barred owl removal.

Background

The Service listed the northern spotted owl as a threatened species under the Act in 1990, based primarily on habitat loss and degradation (55 FR 26114). As a result, conservation efforts for the northern spotted owl have been largely focused on habitat protection. While our listing rule noted that the long-term impact of barred owls on the spotted owl was of considerable concern, the scope and severity of this threat was largely unknown at that time (55 FR 26114, p. 26190). The Recovery Plan summarized information available since our listing rule and found that competition from barred owls poses a significant and immediate threat to the northern spotted owl throughout its range (USFWS 2011, pp. B–10 through B–12).

Historically, the barred owl and northern spotted owl did not co-occur. In the past century, barred owls have expanded their range westward, reaching the range of the northern spotted owl in British Columbia by about 1959. Barred owl populations have continued to expand southward within the range of the northern spotted owl, and were first documented in Washington and Oregon in the early 1970s, and in California in 1976 (Livezey *et al.* 2007, p. 49; Sharp 1989, p. 179). The population of barred owls behind the expansion front continues to increase, and they now outnumber spotted owls in many portions of the northern spotted owl's range (Pearson and Livezey 2003, p. 272).

There is strong evidence to indicate that barred owls are negatively affecting northern spotted owl populations. Barred owls displace spotted owls from high-quality habitat (Kelley *et al.* 2003, p. 51; Pearson and Livezey 2003, p. 274; Courtney *et al.,* pp. 7–27 through 7–31; Gremel 2005, pp. 9, 11, 17; Hamer *et al.* 2007, p. 764; Dugger *et al.* 2011, pp. 2464–1466), reducing their survival and reproduction (Olson *et al.* 2004, p. 1048; Anthony *et al.* 2006, p. 32; Forsman *et al.* 2011, pp. 41–43, 69–70). In addition, barred owls may physically attack spotted owls (Gutierrez *et al.* 2007, p. 187). These effects may help explain declines in northern spotted owl territory occupancy associated with barred owls in Oregon, and reduced northern spotted owl survivorship and sharp population declines in Washington (*e.g.,* in northern Washington, spotted owl populations declined by as much as 55 percent between 1996 and 2006) (Anthony *et al.* 2006, pp. 21, 30, 32; Forsman *et al.* 2011, pp. 43–47, 65–66)). Without management intervention, it is reasonable to expect that competition from barred owls may cause extirpation of the northern spotted owl from all or a substantial portion of its historical range, reducing its potential for recovery.

We are proposing to conduct experiments to determine if removal of barred owls would increase site occupancy, survival, and reproduction, and improve population trends of northern spotted owls. Support for these experiments has been expressed in the scientific community. For example, Gutierrez *et al.* (2007, p. 191) notes, ''[c]orrectly executed removal experiments should provide an unambiguous result regarding the effect of barred owls on spotted owl population declines.'' The Wildlife Society sent a letter to the Director of the Service stating, ''experiments to remove and control barred owls * * * [are] appropriate'' (The Wildlife Society 2008, p. 11). Buchanan *et al.* (2007, p. 683) state, ''[d]espite the potential for confounding effects, appropriately designed removal experiments should provide the strongest inference

regarding the magnitude of the Barred Owl's effect on Spotted Owls.''

The methods for, and the effects of, removing barred owls from northern spotted owl habitat are not fully understood. Three publications, Buchanan *et al.* (2007, entire), Livezey *et al.* (2007, entire), and Johnson *et al.* (2008, entire), analyze and discuss various methods of barred owl control. The Service considered the information in these documents as well as the information gathered in the scoping process in developing alternatives for barred owl removal.

Purpose and Need for the Action

The need for the action is that we lack desired information to:

- Determine the response of northern spotted owl occupancy, survival, reproduction, and population trend to barred owl removal;
- Evaluate whether barred owls can be effectively removed from an area and how much follow-up effort is required to maintain low population levels of barred owls;
- Determine the cost of removal in different types of forested landscapes to inform future management decisions; and
- Help inform timely decisions on whether to move forward with future barred owl management.

The purpose of the proposed action is to contribute to fulfilling the intent of the Act by rapidly implementing experimental research necessary for conservation of the northern spotted owl in accordance with Recovery Action 29 of the Recovery Plan (USFWS 2011, p. III–65). More specifically, the purpose of the proposed action is to:

- Obtain information regarding the effects of barred owls on northern spotted owl vital rates of occupancy, survival, reproduction, and population trend through experimental removal;
- Determine the feasibility of removing barred owls from an area and the amount of effort required to maintain reduced barred owl population levels for the study period;
- Estimate the cost of barred owl removal in different forested landscapes; and
- Develop the information necessary to make a future decision about the management of barred owls as expeditiously as possible.

Alternatives

The draft EIS describes and analyzes seven action alternatives and a no-action alternative. The action alternatives were developed to meet the purposes and need for the proposed action, with consideration given to comments received during public scoping. We received 54 written comments from 29 different organizations (including environmental, conservation, animal welfare, and industry groups; Tribes; professional societies; government agencies; and zoological parks) and 25 individuals.

The potential impacts of the alternatives are assessed in the draft EIS. The alternatives vary by the number and location of study areas, the method of barred owl removal (lethal, or a combination of lethal and non-lethal), and the type of study (demography vs. occupancy).

All action alternatives are based on a simple treatment and control study design. Under this approach, study areas are divided into two comparable segments. Barred owls are removed from the treatment area but not from the control area. Spotted owl populations are measured using the same methodology on both areas, and the population measures (occupancy, survival, reproduction, and population trend) are compared between the control and treatment areas.

Experiments would occur over a period of 3–10 years, varying by alternative. The area affected by the action alternatives ranges from approximately 126,000 to 2,906,800 acres (51,000 to 1,176,000 hectares), or from 0.2 to 5.1 percent of the northern spotted owl's range. A brief description of each alternative follows.

Under the No-action Alternative, the Service would not conduct experimental removal of barred owls, thus not implementing one of the Recovery Actions designated in the Revised Recovery Plan for the northern spotted owl (USFWS 2001, p. III–65). Data that would inform future barred owl management strategies would not be gathered.

Alternative 1 would consist of a demography study in a single study area. The study area would be located within an existing spotted owl demography study area where long-term monitoring of northern spotted owl populations has occurred (Lint *et al.* 1999, p. 17; Lint 2005, p. 7). Only lethal removal would be applied in this alternative.

Alternative 2 would consist of a demography study in three study areas, which would be located within existing spotted owl demography study areas and distributed across the range of the northern spotted owl. Removal would include a combination of lethal and non-lethal methods.

Alternative 3 entails a demography study in two study areas. Barred owl removal would occur outside of existing spotted owl demography study areas, but within areas that have adequate data to conduct pre-removal demography analyses. A combination of lethal and non-lethal removal methods would be used.

Alternative 4 includes two subalternatives, 4a and 4b. Both subalternatives entail a demography study in two study areas outside existing spotted owl demography study areas. Both subalternatives use a combination of lethal and non-lethal methods. Subalternatives 4a and 4b differ in that 4a delays barred owl removal to collect pre-treatment data for comparison with treatment data, whereas 4b starts removal immediately and foregoes pre-treatment data collection.

Alternative 5 employs an occupancy study approach in three study areas. The portion of the study areas where barred owls would be removed is outside existing spotted owl demography study areas. Only lethal removal would be applied in this alternative.

Alternative 6 includes two subalternatives, 6a and 6b. Both subalternatives entail an occupancy study in three study areas. The portion of these study areas where barred owls would be removed is outside existing spotted owl demography study areas. Both subalternatives use a combination of lethal and non-lethal methods. Subalternatives 6a and 6b differ in that 6a delays removal to collect pre-treatment data for comparison with treatment data, whereas 6b starts removal immediately and foregoes pre-treatment data collection.

Alternative 7 includes a combination of demography and occupancy analyses across 11 study areas, some of which have current data while others do not. Three existing spotted owl demographic study areas would be included within these study areas. A combination of lethal and non-lethal methods would be used.

Public Availability of the Draft EIS

The draft EIS is available for viewing and downloading on our web site at *http://www.fws.gov/oregonfwo.* Unbound paper copies and digital copies on compact disk are available upon request. Copies of the draft EIS may also be picked up in person, by appointment, during regular business hours (9 a.m. to 4:30 p.m.) (see **ADDRESSES** section to request a copy or schedule a document pick-up time).

Next Steps

After this comment period ends, we will analyze comments and address them in a final EIS.

Public Comments

We request data, comments, new information, or suggestions from all interested parties. We will consider these comments in developing the final EIS. We particularly seek comments on the following:

- The barred owl and its population status and trend;
- The northern spotted owl and its population status and trend;
- Ongoing northern spotted owl demography studies;
- Effects of the proposed removal experiment on other wildlife species;
- Social and human value/ethics, including the intrinsic value of spotted and barred owls and human culpability in the presence of barred owls in the West;
- Economic effects of the alternatives;
- Cultural resources that may be affected by the alternatives;
- Effects of the alternatives on visitor use and recreation, and visitor experience, especially in National Parks and Recreation Areas and other recreation sites; and
- Effects of the alternatives on Wilderness Areas and wilderness attributes.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

Comments and materials we receive, as well as supporting documentation we used in preparing the draft EIS, will be available for public inspection by appointment, during normal business hours, at our office (see **ADDRESSES** section).

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Meetings

We will hold at least two public meetings at locations within the range of the northern spotted owl (western Washington, western Oregon, and northwestern California). We will announce exact meeting locations and times in local newspapers and on the Internet at *http://www.fws.gov/oregonfwo.*

References Cited

A complete list of references cited in this notice is available upon request from our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

We provide this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. We also publish this notice under authority of the Migratory Bird Treaty Act (16 U.S.C. 703–712) and its specific implementing regulations at 50 CFR 10.13 and 50 CFR 21.23.

Dated: January 11, 2012.

Theresa E. Rabot,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2012–5139 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–N052: FXES11130300000F3–123–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before April 9, 2012.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**.

Permit Applications

Permit Application Number: TE06778A

Applicant: USDA Forest Service, Shawnee National Forest (Rod McClanahan, P.I.), Vienna, IL.

The applicant requests a permit renewal/amendment to take (capture and release; salvage dead specimens) Indiana bats (*Myotis sodalis*) and Gray bats (*Myotis grisescens*) on federal lands in Illinois, Indiana, Missouri, and Ohio. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE207526

Applicant: U.S. Geological Survey, Columbia Environmental Research Center (Mark Wildhaber, P.I.), Columbia, MO.

The applicant requests a permit renewal/amendment to take Pallid Sturgeon (*Scaphirhynchus albus*), Topeka shiner (*Notropis topeka*), and Neosho madtom (*Noturus placidus*). Proposed activities include captive propagation, reintroduction, scientific study, field assessments, and other recovery activities involving capture, handling, and holding of fish in the laboratory (hatchery) and in the wild. Proposed field activities would occur in the Missouri River, its tributaries, the Middle Mississippi River, Neosho River (KS) and Cottonwood River (KS).

Permit Application Number: TE06809A

Applicant: USDA Forest Service, North Central Research Station (Sybill Amelon, P.I.), Columbia, MO.

The applicant requests a permit renewal to take Indiana bats, gray bats, and Ozark big-eared bats (*Corynorhinus townsendii ingens*) throughout the range of the species in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, and Wisconsin. Proposed activities are for

the recovery of the species and enhancement of survival of the species in the wild.

Permit Application Number: TE66634A

Applicant: U.S. Army Corps of Engineers, Memphis, TN.

The applicant requests a permit to take (capture and release) fat pocketbook (*Potamilus capax*), pink mucket (*Lampsilis abrupta*), scaleshell (*Leptodea leptodon*), and rabbitsfoot (*Quadrula cylindrica*l) during freshwater mussel surveys to evaluate potential impacts and avoid harm to listed species. Activities are proposed within the jurisdiction of the Memphis District (USACE) in Illinois and Missouri.

Permit Application Number: TE02378A

Applicant: U.S. Army Corps of Engineers, St. Paul District, St. Paul, MN.

The applicant requests a permit renewal to take (capture and release) Higgins' eye pearlymussel (*Lampsilis higginsi*) within Minnesota, Iowa, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE02344A

Applicant: Mainstream Commercial Divers, Inc.

The applicant requests a permit renewal to take (capture and release) the following freshwater mussels species: Clubshell (*Pleurobema clava*), Northern riffleshell (*Epioblasma torulosa rangiana*), Orange-footed pimpleback pearlymussel (*Plethobasus cooperianus*), Pink mucket pearlymussel, Rough pigtoe (*Pleurobema plenum*), Purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), White cat's paw pearlymussel (*Epioblasma obliquata perobliqua*), Fanshell (*Cyprogenia stegaria*), Fat pocketbook, Higgins' eye pearlymussel (*Lampsilis higginsi*), Winged mapleleaf (*Quadrula fragosa*), and Scaleshell within the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Mississippi, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival and recovery of the species in the wild.

Permit Application Number: TE838715

Applicant: The Nature Conservancy, Ohio Operating Unit, Swanton, OH.

The applicant requests a permit renewal to take Karner blue butterfly (*Lycaeides melissa samuelis*) in the context of habitat management for the recovery of the species at the Kitty Todd Nature Preserve, Lucas County, Ohio.

Permit Application Number: TE66724A

Applicant: Cleveland Metroparks, Timothy Krynak, P.I., Willoughby Hills, OH.

The applicant requests a permit to take (capture and release) Indiana bats within the State of Ohio for the purpose of scientific research aimed at recovery of the species.

Permit Application Number: TE06820A

Applicant: Russell A. Benedict, Central College, Pella, IA

The applicant requests a permit to take (capture and release) Indiana bats and gray bats within the states of Illinois, Iowa, and Missouri. Proposed activities are for the enhancement and recovery of the species in the wild.

Permit Application Number: TE06801A

Applicant: Pittsburgh Wildlife & Environmental, Inc., McDonald, PA.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats throughout the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival and recovery of the species in the wild.

Permit Application Number: TE38842A

Applicant: Sanders Environmental, Inc.

The applicant requests a permit renewal and amendment to take (capture and release) Indiana bats within the States of Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin. Proposed activities are for the enhancement of survival and recovery of the species in the wild.

Permit Application Number: TE66727A

Applicant: Wildlife Specialists, LLC, Wellsboro, PA.

The applicant requests a permit to take (capture and release) Indiana bats within Ohio for the enhancement of survival of the species in the wild.

Permit Application Number: TE130900

Applicant: EnviroScience, Inc., Stow, OH.

The applicant requests a permit renewal to take (capture and release) freshwater mussel species within the States of Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin. Take in the context of harass through capture during surveys within these states is proposed for the purpose of enhancement of survival of the species in the wild through evaluation of habitat use and consideration of those species in project planning.

Permit Application Number: TE195082

Applicant: Thomas E. Tomasi, Missouri State University, Springfield, MO.

The applicant requests a permit amendment to take (capture and release; capture and hold; euthanize) gray bats within the State of Missouri for scientific research activities aimed at recovery of the species and enhancement of its survival in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Dated: March 1, 2012.

Lynn Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2012–5613 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000.L10200000.PH0000.LX.SS.036H0000; HAG 12–0102]

Southeast Oregon Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, the Southeast Oregon Resource Advisory Council (RAC) will meet as indicated below:

DATES: The Southeast Oregon RAC will hold a public meeting Monday, April 2, 2012, from 12 p.m. to 4:30 p.m. and Tuesday, April 3, 2012, from 8:30 a.m. to 12 p.m. at The Gathering Place, 3 N. ''F'' Street, in Lakeview, Oregon 97630. Public comment is scheduled for 3:15 p.m. on April 2 and 10:30 a.m. on April 3. Unless otherwise approved by the Southeast Oregon RAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the RAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the RAC.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, Public Affairs Specialist, Bureau of Land Management Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, (541) 573–4519 or email *tmartina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon. Tentative agenda items for the April 2–3, 2012 meetings include: Updates on agency planning processes to address Sage-grouse conservation measures in land use plans, vegetation management environmental impact statements; the North Steens Transmission Line Environmental Impact Statement and subsequent Documentation of National Environmental Policy Act Adequacy; the Lakeview Resource Area Resource Management Plan amendment and travel management, and a conservation plan for allotments being discussed between the Oregon Cattleman's Association, the U.S. Fish and Wildlife Service, and the BLM. The Southeast Oregon RAC will also welcome new members, hear subcommittee reports, review the RAC's development on questions for analyzing lands with wilderness characteristics, hear a presentation on a travel management proposal in the Chiloquin Ranger District of the Fremont-Winema National Forest, elect a new vice-Chair, and develop agenda items for the next meeting. Any other matters that may reasonably come before the Southeast Oregon RAC may also be addressed.

All meetings are open to the public in their entirety. Information to be distributed to the Southeast Oregon RAC is requested prior to the start of each meeting.

Brendan Cain,

BLM Burns District Manager.

[FR Doc. 2012–5639 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require the Office of Natural Resources Revenue (ONRR) to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. This notice provides major portion prices for the 12 months of calendar year 2010.

DATES: The due date to pay additional royalties based on the major portion prices is May 7, 2012.

FOR FURTHER INFORMATION CONTACT: John Barder, Manager, Team B, Western Audit and Compliance, ONRR; telephone (303) 231–3702; fax number (303) 231–3473; email *John.Barder@onrr.gov;* or Mike Curry, Team B, Western Audit and Compliance, ONRR; telephone (303) 231–3741; fax (303) 231–3473; email *Michael.Curry@onrr.gov.* Mailing address: Office of Natural Resources Revenue, Western Audit and Compliance Management, Team B, P.O. Box 25165, MS 62520B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, ONRR published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases'' effective January 1, 2000 (64 FR 43506). The Indian gas valuation regulations apply to all gas production from Indian (tribal and allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, and a due date for additional royalty payments. See 30 CFR 1206.174(a)(4)(ii) (2011). If you owe additional royalties based on a published major portion price, you must submit to ONRR by the due date an amended Form MMS–2014, Report of Sales and Royalty Remittance. If you do not pay the additional royalties by the due date, ONRR will bill you late payment interest under 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives your payment and an amended Form MMS–2014.

The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-Designated areas	Jan 2010	Feb 2010	Mar 2010	Apr 2010
Blackfeet Reservation	5.00	4.62	3.68	3.39
Fort Belknap Reservation	5.86	5.72	5.35	4.98
Fort Berthold Reservation	5.34	5.07	4.39	3.96
Fort Peck Reservation	8.21	7.64	6.76	6.22
Navajo Allotted Leases in the Navajo Reservation	5.95	5.48	4.65	3.82
Rocky Boys Reservation	3.90	3.67	2.81	2.50
Ute Tribal Leases in the Uintah and Ouray Reservation	5.30	4.95	4.16	3.37

ONRR-Designated areas	May 2010	Jun 2010	Jul 2010	Aug 2010
Blackfeet Reservation	3.39	3.69	3.21	2.97
Fort Belknap Reservation	4.99	5.09	5.20	5.10
Fort Berthold Reservation	3.81	3.64	3.75	4.51
Fort Peck Reservation	6.22	5.56	6.30	6.72
Navajo Allotted Leases in the Navajo Reservation	3.81	3.83	4.21	4.01
Rocky Boys Reservation	2.47	2.67	2.27	2.13
Ute Tribal Leases in the Uintah and Ouray Reservation	3.44	3.47	3.68	.....

ONRR-Designated areas	Sep 2010	Oct 2010	Nov 2010	Dec 2010
Blackfeet Reservation	3.16	2.94	3.33	3.57
Fort Belknap Reservation	5.10	4.73	4.75	5.32
Fort Berthold Reservation	3.86	4.00	3.90	4.49
Fort Peck Reservation	3.90	4.76	5.56	6.16
Navajo Allotted Leases in the Navajo Reservation	3.34	3.47	3.39	4.13
Rocky Boys Reservation	2.24	2.16	2.46	2.60
Ute Tribal Leases in the Uintah and Ouray Reservation	.....	.....	.....	.....

Note: By tribal resolution, the Ute Indian Tribe requested ONRR to change the Ute tribal leases in the Uintah and Ouray Reservation from valuation under the major portion pricing provisions to index zone pricing. We approved the Ute Indian Tribe's request; therefore, you must value production from Ute tribal leases in the Uintah and Ouray Reservation under index zone pricing, effective August 1, 2010. See **Federal Register** notice (75 FR 30430) published June 1, 2010.

For information on how to report additional royalties associated with major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on our Web site at *http://www.onrr.gov/FM/PDFDocs/991201.pdf.*

Dated: March 2, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–5669 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0018]

Notice of Proposed Audit Delegation Renewal for the State of New Mexico

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: The State of New Mexico (State) is requesting that the Office of Natural Resources Revenue (ONRR) renew current delegations of audit and investigation authority. This notice gives members of the public an opportunity to review and comment on the State's proposal.

DATES: Submit written comments on or before *April 9, 2012.*

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

- Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ONRR–2011–0018, and then click search. Follow the instructions to submit public comments. The ONRR will post all comments.
- Mail comments to Hyla Hurst, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64000A, Denver, Colorado 80225. Please reference the Docket No. ONRR–2011–0018 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference the Docket No. ONRR–2011–0018 in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Paul Tyler, State and Indian Coordination, Coordination and Enforcement Management, ONRR, telephone (303) 231–3704. For comments or questions on procedural issues, contact Hyla Hurst, Regulatory Specialist, ONRR, telephone (303) 231–3495. You may obtain a paper copy of the proposals by contacting Ms. Hurst by phone or at the address listed above for mailing comments.

SUPPLEMENTARY INFORMATION: The following official is the State contact for this proposal:

State	Department	Contact information
New Mexico	Taxation and Revenue Department, Oil and Gas Bureau.	Valdean Severson, 1200 South St. Francis Drive, Santa Fe, NM 87502–4034

ONRR received the State's proposal on December 23, 2011. In accordance with 30 CFR 1227.101(b)(1), the State requests that ONRR delegate the royalty management functions of conducting audits and investigations. The State requests delegation of these functions for producing Federal oil and gas leases within the State boundaries; as applicable, for producing Federal oil and gas leases in the Outer Continental Shelf, subject to revenue sharing under 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g); and for other producing solid mineral or geothermal Federal leases within the state. The State does not request delegation of royalty and production reporting functions.

The State of New Mexico requests 100-percent funding of the delegated functions for a 3-year period beginning July 1, 2012, with the opportunity to extend for an additional 3-year period. The State has a current audit delegation agreement with ONRR, as shown in the table below.

State	Agreement Nos.	Term
New Mexico	D12AX70004 0206CA27654	10/01/2011–06/30/2012 07/01/2006–09/30/2011

Therefore, ONRR has determined that we will not hold a formal hearing for comments under 30 CFR 1227.105.

Dated: March 2, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–5670 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–T2–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–12–005]

Government in the Sunshine Act Meeting Notice

AGENCY: *Agency Holding the Meeting:* United States International Trade Commission.

DATES: *Time and Date:* March 14, 2012 at 11 a.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1089 (Review)(Certain Orange Juice from Brazil). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 27, 2012.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 5, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–5722 Filed 3–6–12; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–744]

Certain Mobile Devices, Associated Software, and Components Thereof; Determination To Review Final Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on December 20, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 5, 2010, based on a complaint filed by Microsoft Corporation of Redmond, Washington. 75 FR 68379–80 (Nov. 5, 2010). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile devices, associated software, and components thereof by reason of infringement of U.S. Patent Nos. 5,579,517 (''the '517 patent''); 5,758,352 (''the '352 patent''); 6,621,746 (''the '746 patent''); 6,826,762 (''the '762 patent''); 6,909,910 (''the '910 patent''); 7,644,376 (''the '376 patent''); 5,664,133 (''the '133 patent''); 6,578,054 (''the '054 patent''); and 6,370,566 (''the '566 patent.'') Subsequently, the '517 and the '746 patents were terminated from the investigation. The notice of investigation, as amended, names Motorola Mobility, Inc. of Libertyville, Illinois and Motorola, Inc. of Schaumburg, Illinois as respondents. Motorola, Inc. n/k/a Motorola Solutions was terminated from the investigation based on withdrawal of infringement allegations on July 12, 2011.

The final ID on violation was issued on December 20, 2011. The ALJ issued his recommended determination on remedy and bonding on the same day.

The ALJ found that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile devices, associated software, and components thereof containing same by reason of infringement of one or more of claims 1, 2, 5 and 6 of the '566 patent. Both Complainant and Respondent filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular, the Commission has determined to review: (1) The ID's determination regarding the economic prong of the domestic industry requirement with respect to all of the presently asserted patents in this investigation, *i.e.,* the '352 patent, the '762 patent, the '910 patent; the '376 patent, the '133 patent, the '054 patent, and the '566 patent; (2) the ID's determination regarding the technical prong of the domestic industry requirement with respect to all of the presently asserted patents; (3) the ID's anticipation and obviousness determinations with respect to the '566 patent; (4) the ID's infringement determination with respect to the '352 patent; and (5) the ID's analysis of induced infringement with respect to all of the presently asserted patents. The Commission has determined not to review the remainder of the final ID.

The parties are requested to brief their positions on only the following issues, with reference to the applicable law and the evidentiary record:

(1) With respect to the domestic industry:

(a) For all of the presently asserted patents, what statutory provisions, Federal Circuit and Commission precedent, and record evidence support respondent's argument that the ALJ impermissibly analyzed different articles for purposes of the technical and economic prongs of the domestic industry requirement, *see* Respondent's Petition for Review at 28?

(b) Under Federal Circuit and Commission precedent and section 337 statutory provisions, where an asserted patent covers both hardware and software as one system, is it (i) necessary, and/or (ii) sufficient to demonstrate that the software at issue is implemented and functions on a third party's hardware (*e.g.,* a smartphone) in order to satisfy the technical prong of domestic industry requirement?

(c) For all of the presently asserted patents, what statutory provisions and Commission precedent specifically support the ID's determination regarding the economic prong of the domestic industry requirement and particular findings made in support of such determination?

(2) With respect to the '566 patent:

(a) (i) Please identify all the arguments made before the ALJ that rely on factual support from the record and legal support provided by applicable Federal Circuit and Commission precedent demonstrating that the Apple Newton MessagePad prior art reference discloses the ''synchronization component'' of claim 1; (ii) What, if any, disclosures are missing from the Apple Newton MessagePad reference such that it does not meet the ''synchronization component'' limitation of claim 1;

(b) Please identify all the arguments made before the ALJ that rely on factual support from the record and legal support provided by applicable Federal Circuit and Commission precedent demonstrating that respondent met its burden of proof to show that the Apple Newton MessagePad reference anticipates claim 5.

(c) Please identify all the arguments made before the ALJ that rely on factual support from the record and legal support provided by applicable Federal Circuit and Commission precedent demonstrating that prior art references render the asserted claims of the '566 patent obvious;

(3) With respect to the '352 patent, please identify all the arguments made before the ALJ that rely on factual support from the record and legal support provided by applicable Federal Circuit and Commission precedent demonstrating that complainant met its burden of proof to show that (a) the accused products infringe the asserted claims of the '352 patent, and (b) complainant satisfied the technical prong of the domestic industry requirement.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination on remedy and bonding issued on December 20, 2011, by the ALJ. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '352 patent, the '762 patent, the '910 patent, the '376 patent, the '133 patent, the '054 patent, and the '566 patent, and state the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on March 19, 2012. Reply submissions must be filed

no later than the close of business on March 27, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f) which requires electronic filing. The original document and eight true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-.46).

Issued: March 2, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–5609 Filed 3–7–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–801]

Certain Products Containing Interactive Program Guide and Parental Controls Technology; Modification of Initial Determination and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined on review to modify the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 5) granting a joint motion by Complainants Rovi Corporation, Rovi Guides, Inc. (f/k/a Gemstar-TV International Inc.), United Video Properties, Inc., and Gemstar Development Corporation, all of Santa Clara, California (collectively ''Rovi'') and Respondents Sharp Corporation of Osaka, Japan, Sharp Electronics Corporation of Mahwah, New Jersey and Sharp Manufacturing Company of America, Inc. of Mahwah, New Jersey (collectively ''Sharp'') for termination of the investigation in its entirety based on a settlement agreement. On review, the Commission has modified the ID by further basing it on the final detailed agreement submitted by the parties.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3104. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 31, 2011, based on a complaint filed by Rovi. 76 FR 54253 (Aug. 31, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 6,305,016; 7,493,643; and RE41,993.

On September 30, 2011, Rovi and Sharp filed a joint motion to terminate the investigation in its entirety based upon a settlement agreement. On October 4, 2011, the ALJ issued the subject ID (Order No. 5) granting the motion for termination of the investigation in its entirety. In the subject ID, the ALJ found that the parties satisfied all the requirements under 19 CFR 210.21(b)(1), including a statement that the parties have no other agreements concerning the subject matter of this investigation. The ALJ noted that the settlement agreement contemplates the execution of a more detailed agreement by October 30, 2011, but he found that the possibility of further agreements between the parties did not affect his initial determination to grant the joint motion for termination. No petitions for review were filed.

The Commission determined to review the ID on its own motion and required Rovi and Sharp to submit their detailed final agreement, so that the Commission could fully assess compliance with the requirements of 19 CFR 210.21(b)(1) and 210.50(b)(2). The parties filed their final agreement with the Commission on January 13, 2012. Upon consideration of that document, the Commission has determined that the parties' joint motion for termination complies with §§ 210.21(b)(1) and 210.50(b)(2). Accordingly, the Commission has modified the ALJ's ID to include a consideration of the final agreement.

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 section 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

Issued: March 5, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–5637 Filed 3–7–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Accellera Systems (Formerly Open Systemc Initiative)

Notice is hereby given that, on February 6, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Accellera Systems (formerly Open SystemC Initiative) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Open SystemC Initiative (''OSCI'') has changed its name to Accellera Systems Initiative (''Accellera'') through a merger whereby Accellera is the successor.

In addition, Global Unichip Corp., Hsinchu, Taiwan; CoFluent Design, Nantes, France; GreenSocs Ltd., Cambridge, United Kingdom; Infineon

Technologies Austria AG, Villach, Austria; Semiconductor Technology Academic Research Center, Yokohama, Japan; Industrial Technology Research Institute, Hsinchu, Taiwan; and XtremeEDA Corporation, Ottawa, Ontario, Canada, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Accellera intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on April 14, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 20, 2011 (76 FR 29267).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–5593 Filed 3–7–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on January 31, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Test America, Inc., Parker, CO, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on November 1, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 15, 2011 (76 FR 78044).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–5596 Filed 3–7–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Amended Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on February 10, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International Standards (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2011 and February 2012 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on December 5, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 9, 2012 (77 FR 1085).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–5599 Filed 3–7–12; 8:45 am]

BILLING CODE;P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Applications for YouthBuild Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 11–06.

SUMMARY: The Employment and Training Administration, U.S. Department of Labor (DOL), announces the availability of approximately $75 million in grant funds authorized by the YouthBuild provisions of the Workforce Investment Act [29 U.S.C. 2918a].

YouthBuild grants will be awarded through a competitive process. Under this solicitation, DOL will award grants to organizations to oversee the provision of education, occupational skills training, and employment services to disadvantaged youth in their communities while performing meaningful work and service to their communities.

Based on FY 2012 funding, DOL hopes to serve approximately 5,210 participants during the grant period of performance, with projects operating in approximately 75 communities across the country.

The complete SGA and any subsequent SGA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is May 8, 2012.

FOR FURTHER INFORMATION CONTACT: Kia Mason, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–2606.

Signed March 5, 2012 in Washington, DC.

Donna Kelly,

Grant Officer, Employment and Training Administration.

[FR Doc. 2012–5657 Filed 3–7–12; 8:45 am]

BILLING CODE 4510–FT–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Legal Services Corporation's Audit Committee will meet March 15, 2012. The meeting will commence at 2:30 p.m., Eastern Standard Time, and will continue until the conclusion of the Committee's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend but wish to listen to the public proceeding may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348.
- When connected to the call, please immediately ''MUTE'' your telephone.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of minutes of the Committee's meeting of January 19, 2012.
3. Report on the Form 990 for Fiscal Year 2011.
4. Discussion of Committee members' self-evaluations for 2011 and the Committee's goals for 2012.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Upon request, non-confidential meeting materials will be made available in electronic format. Please contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 1 business day in advance of the meeting.

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: March 6, 2012.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–5832 Filed 3–6–12; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings Notice; March 2012

TIME AND DATES: All meetings are held at 2:30 p.m.
Wednesday, March 7;
Thursday, March 8;
Tuesday, March 13;
Wednesday, March 14;
Thursday, March 15;
Tuesday, March 20;
Wednesday, March 21;
Thursday, March 22;
Tuesday, March 27;
Wednesday, March 28;
Thursday, March 29.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW. Washington DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A Heltzer, Executive Secretary, (202) 273–1067.

Dated: March 6, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–5757 Filed 3–6–12; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0286]

Guidance for Decommissioning Planning During Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice appearing in the **Federal Register** on February 15, 2012 (77 FR 8751), that re-opened the public comment period for Draft Regulatory Guide (DG)–4014, ''Decommissioning Planning During Operations.'' This action is necessary to correct the NRC's Agencywide Documents Access and Management System (ADAMS) accession number for accessing DG–4014 in the **ADDRESSES** section of this document.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667; email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 8751 of **Federal Register** document 2012–3522, published February 15, 2012 (77 FR 8751), in the second column, the second bullet from the bottom, last sentence, under the section titled **ADDRESSES**, ''ML110960051'' is corrected to read ''ML111590642.''

Dated at Rockville, Maryland, this 5th day of February 2012.

For the Nuclear Regulatory Commission.

Cindy Bladey,

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

[FR Doc. 2012–5658 Filed 3–7–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66507; File No. SR–NYSEArca–2011–81]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 3 Thereto, Relating to the Listing and Trading of the Guggenheim Enhanced Short Duration High Yield Bond ETF Under NYSE Arca Equities Rule 8.600

March 2, 2012.

I. Introduction

On November 14, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Guggenheim Enhanced Short Duration High Yield Bond ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 5, 2011.[3] On January 17, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On January 18, 2012, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On February 7, 2012, the Exchange extended the time period for Commission action to March 4, 2012. On February 29, 2012, the Exchange filed Amendment No. 3 to the proposed rule change.[6] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 3 thereto.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Claymore Exchange-Traded Fund Trust (''Trust''),[7] a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The investment adviser for the Fund is Guggenheim Funds Investment Advisors, LLC (''Adviser''). The Bank of New York Mellon is the custodian and transfer agent for the Fund. Guggenheim Funds Distributors, Inc. is the distributor for the Fund. The Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[8]

Guggenheim Enhanced Short Duration High Yield Bond ETF

The investment objective of the Fund is to seek to maximize total return, through monthly income and capital appreciation, consistent with capital preservation. The Fund will use an actively managed strategy that seeks to maximize total return, comprised of income and capital appreciation, and risk-adjusted returns in excess of the 3-month LIBOR, while maintaining a low-risk profile relative to below investment grade rated, longer-term, fixed income investments. The Fund will primarily invest in below investment grade rated bonds while opportunistically allocating to investment grade bonds and other select securities. The Fund's portfolio will maintain an effective duration of one year or less.

Primary Investments

As a principal investment strategy, under normal market circumstances,[9] the Fund will invest at least 80% of its net assets in debt securities which are below investment grade (''high yield'' bonds or ''junk bonds'').[10] Bonds are considered to be below investment grade if they have a Standard & Poor's or Fitch credit rating of ''BB+'' or lower or a Moody's credit rating of ''Ba1'' or lower or bonds that are unrated and deemed to be of below investment grade quality as determined by the Adviser.[11] The Fund's primary investments also may include floating rate or adjustable rate bonds,[12] callable bonds with, as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65847 (November 29, 2011), 76 FR 75926 (''Notice'').

[4] The Exchange withdrew Amendment No. 1 on January 18, 2012 and extended the time period for Commission action to January 25, 2012. On January 23, 2012, the Exchange extended the time period for Commission action to February 8, 2012.

[5] The Exchange withdrew Amendment No. 2 on February 29, 2012.

[6] Amendment No. 3 amended the sentence: ''The Fund may invest in the aggregate up to 15% of its net assets (taken at the time of investment) in: (1) Illiquid securities [13] and (2) Rule 144A securities.'' The amended sentence reads: ''The Fund may hold in the aggregate up to 15% of its net assets in (1) illiquid securities,[13] and (2) Rule 144A securities.'' Amendment No. 3 also amended the sentences: ''Master notes are generally illiquid and therefore subject to the Fund's percentage limitations for investments in illiquid securities. The Fund may invest up to 15% of its net assets in bank loans, which include participation interests (as described below).'' The amended sentences read: ''Master notes are generally illiquid and therefore subject to the Fund's percentage limitations for holdings of illiquid securities. The Fund may hold up to 15% of its net assets in bank loans, which include participation interests (as described below).'' Lastly, Amendment No. 3 amended the sentence: ''Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund's percentage limitations for investments in illiquid securities.'' The amended sentence reads: ''Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund's percentage limitations for holdings of illiquid securities.'' For each of the amendments discussed above, the Exchange also made corresponding amendments to Exhibit 1 of the filing. The purpose of Amendment No. 3 was to make the proposed rule change more consistent with the Investment Company Act of 1940 (''1940 Act'') requirements relating to restrictions on holdings of illiquid securities by registered open-end management investment companies. Because Amendment No. 3 seeks to maintain consistency with the 1940 Act and rules and regulations thereunder, and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, the amendment is not subject to notice and comment.

[7] The Trust is registered under the 1940 Act. On December 8, 2010, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–134551 and 811–21906) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29271 (May 18, 2010) (File No. 812–13534) (''Exemptive Order'').

[8] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[9] The term ''under normal market circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] As of August 30, 2011, the Adviser represents that there were approximately 1,100 high yield bond issues that mature on or before December 2016, representing $420 billion or approximately 40% of the total amount of high yield bonds outstanding. (Source: Barclays Capital). As of August 1, 2011, floating rate bank loans outstanding were $637 billion. (Source regarding floating rate bank loans: Credit Suisse Leveraged Finance Strategy Update, August 1, 2011).

[11] The Fund's investments will be subject to credit risk. Credit risk is the risk that issuers or guarantors of debt instruments or the counterparty to a derivatives contract, repurchase agreement or loan of portfolio securities is unable or unwilling to make timely interest and/or principal payments or otherwise honor its obligations. Debt instruments are subject to varying degrees of credit risk, which may be reflected in credit ratings. Credit rating downgrades and defaults (failure to make interest or principal payment) may potentially reduce the Fund's income and Share price.

[12] The Fund may invest in debt securities that have variable or floating interest rates which are readjusted on set dates (such as the last day of the

determined by the Adviser, a high probability of being redeemed prior to maturity,[13] ''putable'' bonds (bonds that give the holder the right to sell the bond to the issuer prior to the bond's maturity) when the put date is within a 24 month period, ''busted'' convertible securities (a convertible security that is trading well below its conversion value minimizing the likelihood that it will ever reach its convertible price prior to maturity), and other types of securities, all of which may be rated at or below investment grade. The Fund will not invest in securities in default at the time of investment. The management process is intended to be highly flexible and responsive to market opportunities. For example, when interest rates are low and credit markets are healthy, the Fund may be overweight in callable bonds, which generally have a lower yield-to-call than yield-to-maturity, as well as bonds that are subject to company repurchases and tender offers. In weaker credit markets, the Fund may be overweight in bonds that are at maturity or have putable features. The Adviser anticipates that under normal market circumstances the Fund will invest approximately 20% of its assets in securities that will be called, tendered, or mature within 60 to 90 days.

The Adviser will commence the investment review process with a top-down, macroeconomic outlook to determine both investment themes and relative value within each market sector and industry. Within these parameters, the Adviser will then apply detailed bottom-up security selection to select individual portfolio securities that the Adviser believes can add value from income and/or the potential for capital appreciation. Credit research may include an assessment of an issuer's profitability, its competitive positioning and management strength, as well as industry characteristics, liquidity, growth, and other factors. The Adviser may sell a portfolio security due to changes in credit characteristics or outlook, as well as changes in portfolio strategy or cash flow needs. A portfolio security may also be sold and replaced with one that presents a better value or risk/reward profile. Except during periods of temporary defensive positioning, the Adviser generally expects to be fully-invested.

The Adviser aims to manage the Fund so as to provide investors with a higher degree of principal stability than is typically available in a portfolio of lower-rated longer-term, fixed income investments. The Adviser intends to invest the Fund's assets in the securities of issuers in many different industries and intends to invest a maximum of 2–3% of the Fund's assets in the securities of any one issuer, though the Fund is not restricted from maintaining positions of greater weight based upon the outlook for an issuer or during periods of relatively small asset levels of the Fund.

The Fund may invest a portion of its assets in various types of U.S. government obligations. The Fund also may invest in convertible securities, including bonds, debentures, notes, preferred stocks, and other securities that may be converted into a prescribed amount of common stocks or other equity securities at a specified price and time. The Fund may invest in municipal securities and certificates of deposit.

While the Adviser anticipates that the Fund will invest primarily in the debt securities of U.S.-registered companies, it may also invest in those of foreign companies in developed countries.[14] The Fund may invest in U.S.-registered, dollar-denominated bonds of foreign corporations, governments, agencies, and supra-national agencies.[15]

The Fund will be managed in accordance with the principal investment strategies stated above, subject to the following investment restrictions: The Fund will not employ any leverage in order to meet its investment objective, and, consistent with the Exemptive Order, the Fund will not invest in derivatives, including options, swaps, or futures.

Other Investments

As non-principal investment strategies, the Fund may invest its remaining assets in money market instruments (including other funds which invest exclusively in money market instruments), preferred securities, insurance-linked securities, and structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular security or security index). The Fund may, from time to time, invest in money market instruments or other cash equivalents as part of a temporary defensive strategy to protect against temporary market declines. When the Fund takes a temporary defensive position that is inconsistent with its principal investment strategies, the Fund may not achieve its investment objective. The Fund may also invest, to a limited extent, in other pooled investment vehicles which are not registered investment companies under the 1940 Act; however, the Fund will not invest in hedge funds or commodity pools.

The Fund may invest in commercial interests, including commercial paper and other short-term corporate instruments. Commercial paper consists of short-term promissory notes issued by corporations and may be traded in the secondary market after its issuance.

The Fund may invest in zero-coupon or pay-in-kind securities. These securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities. Because zero-coupon and pay-in-kind securities do not pay current cash income, the price of these securities can be volatile when interest rates fluctuate.

The Fund may invest up to 10% of its net assets in asset-backed securities issued or guaranteed by private issuers.

The Fund may hold in the aggregate up to 15% of its net assets in: (1) Illiquid securities [16] and (2) Rule 144A

month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate instrument. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations.

[13] During periods of falling interest rates, an issuer of a callable bond may exercise its right to pay principal on an obligation earlier than expected, which may result in the Fund reinvesting proceeds at lower interest rates, resulting in a decline in the Fund's income.

[14] The Adviser considers developed countries to include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

[15] Such bonds have different risks than investing in U.S. companies. These include differences in accounting, auditing, and financial reporting standards, the possibility of expropriation or confiscatory taxation, adverse changes in investment or exchange control regulations, political instability, which could affect U.S. investments in foreign countries, and potential restrictions of the flow of international capital. Foreign companies may be subject to less governmental regulation than U.S. issuers. Moreover, individual foreign economies may differ favorably or unfavorably from the U.S. economy in such respects as growth of gross domestic product, rate of inflation, capital investment, resource self-sufficiency, and balance of payment options.

[16] The Fund may invest in master notes, which are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula or be a set rate. Although there is no secondary market in master demand notes, if such notes have a

Continued

securities.[17] Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets. Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A under the Securities Act of 1933. Rule 144A permits certain qualified institutional buyers, such as the Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act of 1933.

The Fund may invest in the securities of other investment companies (including money market funds). Under Section 12(d) of the 1940 Act, or as otherwise permitted by the Commission, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company and (iii) 10% of the Fund's total assets in investment companies in the aggregate.[18]

The Fund may enter into repurchase[19] and reverse repurchase agreements.[20] The Fund also may invest in the securities of real estate investment trusts to the extent allowed by law, which pool investors' funds for investments primarily in commercial real estate properties.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies, or instrumentalities.

The Fund's portfolio holdings will be disclosed on its Web site (*www.guggenheimfunds.com*) daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

The Fund intends to maintain the level of diversification necessary to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.[21] The Fund represents that the portfolio will include a minimum of 13 non-affiliated issuers. The Fund will only purchase performing securities, not distressed debt. Distressed debt is debt that is currently in default and is not expected to pay the current coupon.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[22] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, the Fund will not invest in non-U.S.-registered equity securities.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and the Registration Statement, as applicable.[23]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[24] and the rules and regulations thereunder applicable to a national securities exchange.[25] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[26] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[27] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed

demand future, the payee may demand payment of the principal amount of the note upon relatively short notice. Master notes are generally illiquid and therefore subject to the Fund's percentage limitations for holdings of illiquid securities. *See supra* note 6. The Fund may hold up to 15% of its net assets in bank loans, which include participation interests (as described below). *See id.* Any bank loans will be broadly syndicated and may be first or second liens; the Fund will not invest in third lien or mezzanine loans. The interest rate on bank loans and other adjustable rate securities typically resets every 90 days based upon then current interest rates. The Fund may purchase participations in corporate loans. Participation interests generally will be acquired from a commercial bank or other financial institution (''Lender'') or from other holders of a participation interest (''Participant''). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (''Borrower''). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the enforcement of the Fund's rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale. Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund's percentage limitations for holdings of illiquid securities. *See id.*

[17] *See supra* note 6.

[18] 15 U.S.C. 80a–12(d).

[19] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

[20] Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally the effect of such transactions is that the Fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases the Fund is able to keep some of the interest income associated with those securities.

[21] 26 U.S.C. 851.

[22] 17 CFR 240.10A–3.

[23] *See* Notice and Registration Statement, *supra* notes 3 and 7, respectively.

[24] 15 U.S.C. 78f.

[25] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[28] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[29] The NAV per Share of the Fund will be determined once daily as of the close of the New York Stock Exchange (''NYSE''), usually 4 p.m. Eastern Time, each day the NYSE is open for trading, provided that any assets or liabilities denominated in currencies other than the U.S. dollar shall be translated into U.S. dollars at the prevailing market rates on the date of valuation as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers); and U.S. fixed income instruments may be valued as of the announced closing time for trading in fixed income instruments on any day that the Securities Industry and Financial Markets Association announces an early closing time. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, price information for the debt securities held by the Fund will be available through major market data vendors. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[30] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[31] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[32] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[33]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[34] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not: (a) Invest in non-U.S.-registered equity securities; (b) employ any leverage in order to meet its

[28] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[29] On a daily basis, the Adviser will disclose on the Fund's Web site for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[30] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[31] *See* NYSE Arca Equities Rule 8.600(d)(2)(C). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[32] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[33] *See supra* note 8. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[34] 17 CFR 240.10A–3.

investment objective; and (c) consistent with the Exemptive Order, invest in derivatives, including options, swaps, or futures.

(7) The Fund may hold in the aggregate up to 15% of its net assets in: (a) Illiquid securities; and (b) Rule 144A securities.[35]

(8) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[36] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NYSEArca–2011–81), as modified by Amendment No. 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

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[35] *See supra* note 6.

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66508; File No. SR–FINRA–2012–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) To Adopt New Standardized Electronic Form CMA

March 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rules 1012 (General Provisions) and 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to adopt new standardized electronic Form CMA.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) provides parameters for certain changes in a member's ownership, control, or business operations that would require a continuing membership application. Among other things, those changes include a merger of a member with another member, a direct or indirect acquisition by a member of another member, a change in equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, or a material change in business operations as defined in NASD Rule 1011(k) (''material change in business operations'').[3] Currently, NASD Rule 1017 does not require an applicant seeking approval of a change of ownership, control, or business operations (''continuing membership applicant'' or ''applicant'') to submit a standardized form as part of its continuing membership application and provides little detail regarding an application's required contents. Instead, each applicant is responsible for determining the contents of its continuing membership application. This often results in information deficiencies, which in turn, creates unnecessary delays in efficiently processing the applications. NASD Rule 1017 also generally requires a continuing membership application to be filed in the district office in which an applicant's principal place of business is located. Additionally, NASD Rule 1012 (General Provisions) provides that, unless otherwise prescribed by FINRA, applicants may submit continuing membership applications via first-class mail, overnight courier, or hand-delivery (or facsimile upon agreement by FINRA and the applicant).

This manner of submitting a continuing membership application reduces the overall efficiency of the process and also creates unnecessary delays in properly forwarding information within FINRA, such as in conveying information to and from the centralized Membership Application Program Group formed in January 2011. To address these deficiencies, the proposed rule change amends NASD Rule 1012 to require continuing membership applicants to file an application in the manner prescribed in Rule 1017. In addition, the proposed rule change amends NASD Rule 1017(b) to require continuing membership applicants to file an application in the manner prescribed by FINRA with the Department of Member Regulation (''the Department'') and to include the completed Form CMA as part of the contents of a continuing membership application.

New Form CMA will provide continuing membership applicants with the benefits of a streamlined application process that new member applicants currently experience via the standardized online Form NMA and is intended to significantly reducing administrative delays that exists in today's manual application processes.

New Form CMA is structured similarly to revisions proposed for Form NMA with adjustments in the content of

[3] NASD Rule 1011(k) defines a ''material change in business operations'' as including, but not limited to: (1) Removing or modifying a membership agreement restriction; (2) market making, underwriting, or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA Rule 15c3–1.

new Form CMA based on the differing nature of the application types.[4] As with revised Form NMA, new Form CMA will seek to elicit information from applicants in a manner consistent with the standards of admission, contained in NASD Rule 1014, against which NASD Rule 1017 requires each application to be evaluated. Additionally, the structure and guidance provided by new Form CMA is designed to obtain the basic information needed for all applicants with embedded flexibility to allow for variations based on the particular application type being submitted.

Also, new Form CMA, as with the revised Form NMA, will pre-populate certain fields with information provided to FINRA in other submissions (*e.g.,* Central Registration Depository (CRD®) entitlement forms and Form BD) or otherwise available to FINRA from CRD records (*e.g.* continuing education status), thereby minimizing the time necessary for applicants to complete the new form.[5] In addition, new Form CMA will include a number of optional information request fields that can be used by applicants to provide additional information if and when it is applicable to the applicant's proposed change. The optional field approach is intended to provide flexibility for the significant level of variation seen in members' structures, business lines, and proposed changes.

Below is a synopsis of the content of new Form CMA, by standard:

• Standard 1 (Overview of the Applicant):

This standard seeks certain applicant overview information (*e.g.,* details of the proposed business change, verification of current business activities, new business lines added, supervisors for new business lines, identification of other persons associated with the proposed business change).

• Standard 2 (Licenses and Registrations):

This standard consists of information requests regarding the continuing membership applicant's licenses and registrations that will be affected by the proposed business change (*e.g.,* changes to required licenses and registrations, new or continuing registration or examination waivers, new or continuing two-principal requirement waiver, new or continuing Securities Information Center exemption, other self-regulatory organization (''SRO'') registrations and/or withdrawals from other SRO registrations, new non-registered officers, directors, or control persons).

• Standard 3 (Compliance With Securities Laws, Just and Equitable Principles of Trade):

This standard consists of specific requests for information (*e.g.,* disciplinary history) and documentation (*e.g.,* state or federal orders or decrees, statements of claims, cancelled checks for payment of arbitration awards, proofs of settlement, settlement agreements) that FINRA considers necessary for the applicant to demonstrate compliance with the requirements of this standard.

• Standard 4 (Contractual and Business Relationships):

This standard includes the information requests regarding a continuing membership applicant's contractual and business relationships (*e.g.,* description of contractual arrangements, expense sharing agreements, financing arrangements, fidelity bonds or fidelity bond applications, support and service agreements).

• Standard 5 (Facilities):

This standard consists of information requests regarding a continuing membership applicant's facilities (*e.g.,* material changes to facilities or locations, departmental information barriers, space sharing arrangements, lease and/or sub-lease agreements).

• Standard 6 (Communications and Operational Systems):

This standard includes information requests regarding a continuing membership applicant's communications and operational systems (*e.g.,* communications and operational systems changes, supervision arrangements of multiple locations, business continuity plan documents, information relating to the applicant's use of social media sites).

• Standard 7 (Maintaining Adequate Net Capital):

This standard includes information regarding an applicant's net capital requirements (*e.g.,* information on the nature and source of capital, additional funding plans, minimum net capital requirements, future funding sources).

• Standard 8 (Financial Controls):

This standard seeks information regarding a continuing membership applicant's financial controls (*e.g.,* information regarding changes to the applicant's registered financial and operations principal (''FINOP''), impact of proposed business change on financial controls).

• Standard 9 (Written Procedures):

This standard seeks information regarding a continuing membership applicant's written procedures (*e.g.,* impact of proposed change on written supervisory procedures (''WSP''), WSP checklist, sample reports to support supervision and financial controls).

• Standard 10 (Supervisory Structure):

This standard seeks information regarding a continuing membership applicant's supervisory structure (*e.g.,* changes to supervisory or management personnel, information regarding supervisors' experience and duties, chief compliance officer experience, non-FINOP outside business activities notifications).

• Standard 11 (Books and Records):

This standard seeks information regarding a continuing membership applicant's books and records (*e.g.,* impact of potential business change on applicant's recordkeeping systems and recordkeeping service providers, sample books and records relating to new business activities).

• Standard 12 (Continuing Education):

This standard seeks information regarding a continuing membership applicant's continuing education (''CE'') obligations (*e.g.,* changes to the applicant's CE program, revised CE training needs assessment and written training plan).

FINRA worked closely with an industry task force, comprised of seven representatives from small and large firms, several of whom also act as consultants, during the development of the new Form CMA. Among other things, the task force's input assisted FINRA to make changes intended to reduce applicants' administrative burden when completing Form CMA. Overall, FINRA believes that the new Form CMA will facilitate more effective and efficient application processing for the applicants.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the

[4] *See* SR–FINRA–2012–017 (proposed rule change to restructure the content of existing Form NMA to, among other things, make the requested information and documentation more consistent with the standards in NASD Rule 1014 (Department Decision)).

[5] *See id.*

[6] 15 U.S.C. 78*o*–3(b)(6).

public interest. The proposed rule change amends NASD Rules 1012 and 1017 to adopt a new standardized electronic form, Form CMA, to be used by all continuing membership applicants as part of their continuing membership applications. Form CMA elicits information from applicants in a manner consistent with the standards of admission contained in NASD Rule 1014, against which continuing membership applications are evaluated. FINRA believes that new Form CMA will reduce applicants' administrative burden and ensure a more streamlined and efficient continuing membership application process for both FINRA and applicants.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2012–018 and should be submitted on or before March 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5631 Filed 3–7–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0023]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CABARET V; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0023. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel CABARET V is:

Intended Commercial Use of Vessel: ''Sportfishing without commercial sale and carrying of passengers for whale watching, etc. (When not carrying passengers, the vessel will continue to engage in commercial fisheries as an undertonnage vessel).''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island.''

The complete application is given in DOT docket MARAD–2012–0023 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 1, 2012.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–5503 Filed 3–7–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0028]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SKYKOMISH TOO; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0028. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel SKYKOMISH TOO is:

Intended Commercial Use of Vessel: ''Charter vessel.''

Geographic Region: ''California, Oregon and Washington.'' The complete application is given in DOT docket MARAD–2012–0028 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 1, 2012.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–5504 Filed 3–7–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0042; Notice 2]

Graco Children's Products Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition.

SUMMARY: Graco Children's Products Inc. (Graco), has determined that certain warning labels attached to detachable accessory pillows that it sold with MyRide™ 65 line child restraint systems produced between April, 2009, and October, 2009, failed to meet the flammability requirements of Federal Motor Vehicle Safety Standards (FMVSS) No. 213 [1]. Graco estimates that about 90,000 child restraint systems may be affected. Graco filed an appropriate report pursuant to 49 CFR Part 573 *Defect and Noncompliance Responsibility and Reports* on November 13, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Graco has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on April 13, 2010 in the **Federal Register** (75 FR 18952). One comment was received from Dean L. Hoppe. To view the petition, the comment, and all supporting documents log onto the Federal Docket

[1] Graco describes the noncompliance as one with FMVSS No. 302. However, FMVSS No. 302 does not in itself apply to motor vehicle equipment. Paragraph S4 of FMVSS No. 302 is invoked by reference in FMVSS No. 213, therefore, this noncompliance is a noncompliance with FMVSS No. 213 not FMVSS No. 302.

Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0042.''

For further information on this decision contact Mr. Zachary R. Fraser, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5754, facsimile (202) 366–7002.

Affected are all models of MyRide™ 65 convertible child restraint systems manufactured between April, 2009, and October, 2009, in the Company's Mexico facility. The Company estimated that approximately 90,000 child restraint systems may be affected, and of this total, 50,000 are potentially in use by its customers (consumers) and 40,000 were with retailers.

Graco describes the MyRide™ 65 child restraint system as being manufactured with a detachable accessory pillow, and this pillow includes a warning label (the ''pillow label'') regarding appropriate use of the pillow for children of a certain age range. The pillow label warns consumers not to use the pillow when the MyRide™ 65 child restraint system is being used by children weighing more than 40 lbs (18.1 kg). The pillow, which is removable, is attached to the MyRide™ 65 child restraint system by a hook and loop fastener material, one side of which is sewn onto a ''tail'' of the pillow and the other onto the top of the child restraint system above the child's head.

Based on its internal investigation, Graco believes that the noncompliance is that a pillow label sewn onto the detachable head pillow of certain MyRide™ 65 child restraint systems does not comply with paragraph S5.7 of FMVSS No. 213.

After discovering that a recent lot of pillow labels delivered in late October 2009 to the Company's Mexico facility had not been properly treated for flame resistance, Graco's plant management began an investigation. They immediately started reviewing all pillow label lots previously delivered to its Mexico facility since April 2009, the production start date for the MyRide™ line child restraint systems, to determine the extent of the noncompliance among its lots of pillow labels.

Graco found that its noncompliant pillow labels were manufactured by a sub-supplier to Graco's normal pillow label supplier. Graco has determined that the sub-supplier did not follow Graco's production specifications, and as a result, failed to meet the requirements of FMVSS No. 213. Graco also concluded that that sub-supplier was the only one providing the noncompliant pillow labels.

Graco also found that all other labels and materials for its MyRide™ 65 child restraint systems were provided by Graco's regular supplier itself and not the sub-supplier. In addition to its investigation, the Company's plant management also examined and verified through laboratory testing, that all other material components used in the MyRide™ 65 child restraint systems comply with the standards of FMVSS No. 213. Graco added that new plant management at its Mexico plant has implemented more robust quality controls to prevent such problems from happening in the future and that Graco has received no complaints, reports or any other information about adverse impacts from this noncompliance from consumers or any other outside source.

Since the discovery of the noncompliance, Graco indicated that it has taken steps to ensure that every MyRide™ 65 child restraint system subsequently released for shipment has been manufactured with labels compliant with all applicable safety standards, including FMVSS No. 213. In addition, Graco stopped all shipments of the MyRide™ 65 child restraint systems in its possession when the noncompliance was discovered and replaced the detachable accessory pillows with pillows manufactured with a pillow label compliant with the FMVSS No. 213 prior to delivery.

Graco believes that the noncompliance of the pillow label to meet the requirements of FMVSS No. 213 is inconsequential to overall motor vehicle safety for the following reasons:

> When reviewing the accessory pillow at issue, including its size, location, function and overall design, the risk of injury resulting from the noncompliant Label on the detachable accessory pillow is inconsequential to the overall safety of the MyRide child restraint system. Specifically, the Label is a physically small component of the child restraint system located in an area not likely to be exposed to open flame. In fact, the potential for the Label serving as an ignition point for a larger conflagration is near zero. This circumstance, along with the compliant status of all other fabric and label components of the MyRide child restraint system, render the Label's noncompliance inconsequential to motor vehicle safety.
>
> As noted above, the Label is a rectangular shaped tag measuring approximately 3 inches by 1¼ inches. The area of the Label is insignificant with respect to the over two yards of fabric that is used to make the pad and the ''soft goods'' for the MyRide child restraint system. Proportionally, the percentage of material is less than 1/100% of the total surface area of the child restraint system. Moreover, all other fabric, including other warning labels for the MyRide child restraint system, are flame resistant. The small size of affected material renders the likelihood of ignition of this one Label highly untenable.
>
> In addition * * * the Label is also located in an area that makes it highly unlikely to be exposed to an open flame without the passenger compartment of the car being already engulfed in flame * * * When put in its proper place * * * the Label is surrounded by flame resistant material and in a location interior to the overall child restraint system design * * *''
>
> * * * the owner's manual and instructions for the MyRide child restraint system expressly states that the pillow is not to be used with any child over 18.1 kg (40 lbs) placed into the MyRide child restraint system. Accordingly, a significant number of MyRide child restraint systems are not used with the pillow, thereby further reducing an already low risk of flammability.
>
> * * * the MyRide * * * child restraint is not designed to be easily removed from a motor vehicle once installed * * * the MyRide child restraint system is tethered into the child restraint system or is installed for use with the motor vehicle's type II lap and shoulder belt. Therefore, the only risk of exposure to an ignition source would be while installed in a motor vehicle where pinpoint open flame in the upper portion of the child restraint system on one particular side is highly unlikely.
>
> Graco has considered the potential for variety of potential ignition sources that may be exposed to the tag. The Company believes that the likelihood of the Label coming accidentally in contact with any type of ignition device is extremely low. Graco's analysis also included potential ignition from cigarettes or other smoking materials * * *

Graco also mentioned that real world reports support the Company's belief that the noncompliant pillow labels are not a risk to safety. Graco said it has received no reports or complaints of a fire involving the MyRide™ 65 child restraint system or any of its components. Graco added, ''The insignificant opportunity of a fire hazard to a child from ignition of this small tag, located in the interior portion of the child restraint system contained inside a motor vehicle supports Graco's assertion regarding the inconsequential nature of this noncompliance.''

In summation Graco restated its belief that based on the size of the pillow label, its location, compliance of all other labels and fabric with FMVSS No. 213, and the nearly impossible opportunities for direct ignition of the pillow label only, that the described noncompliance of the pillow label to meet the requirements of FMVSS No. 213 is inconsequential to motor vehicle safety. Thus, Graco requests that NHTSA grant its petition to exempt it from providing notification of

noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120.

NHTSA Decision

Requirement Background

The purpose of the flammability requirements is to reduce deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes. S5.7 of FMVSS No. 213 requires that each material used in a child restraint system shall conform to the flammability requirements contained in S4 of FMVSS No. 302. S4 contains flammability requirements to measure the burn rate of specific components of vehicle occupant compartments.

NHTSA's Analysis of Graco's Reasoning

Based on Dorel's explanation in its petition, certain warning labels sewn to a detachable pillow provided with the Dorel MyRide 65 child restraint system did not comply with the flammability requirements contained in FMVSS No. 213 and No. 302. Dorel stated that the subject warning labels were supplied by a sub-supplier of Dorel's usual supplier of pillow warning labels and were not properly treated for flammability resistance. Dorel concludes that since the warning labels were not properly treated for flammability resistance then the labels are not in compliance with FMVSS No. 213.

Dorel states that the noncompliance of the pillow label to the requirements of FMVSS No. 213 is inconsequential to overall motor vehicle safety. The size, location, function and overall design of the pillow at issue, together with the low risk of injury resulting from the noncompliant label on the detachable pillow, is inconsequential to the overall safety of the MyRide child restraint system. Since the label is physically small (3 inches by 1¼ inches) the likelihood of ignition is negligible, and the label is surrounded by flame resistant materials. Graco considered a variety of potential ignition sources that may be exposed to the label and believes that the likelihood of the label coming into contact with any type of ignition source is extremely low, including the potential ignition from cigarettes or other smoking materials.

NHTSA Conclusions

There appears to be an insignificant safety risk created by the noncompliance. The underlying concern is that the label attached to the detachable pillow could ignite since it was not treated with flame resistant material. But the relatively small size of the label, together with its proximity to other materials on the child restraint system that have been treated with flame resistant materials, renders the likelihood of ignition for this one label extremely low.

There appears to be no significant safety risk caused by the noncompliance.

NHTSA's Response to the Comment

In its comments to the docket, Hoppe did not specifically address the pillow warning label noncompliance that is the essence of the Graco petition. Instead he applauded Graco and NHTSA for enforcing the applicable safety standards.

Because Hoppes' comments did not provide any information addressing Graco's noncompliance that is the essence of its petition, Hoppes'comments do not support denying the subject petition.

Decision

After a review of Graco's arguments and Dean L. Hoppe's comment, NHTSA is convinced that Graco has met its burden of demonstrating that the noncompliance does not present a significant safety risk. Therefore, NHTSA agrees with Graco that this specific noncompliance is inconsequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that Graco has met its burden of persuasion that the FMVSS No. 213 noncompliance in the child restraint systems identified in Graco's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Graco's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the car child restraint systems[2] that Graco no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: March 2, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–5623 Filed 3–7–12; 8:45 am]

BILLING CODE 4910–59–P

[2] Graco's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Graco as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the affected child restraint systems. However, a decision on this petition cannot relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant child restraint systems under their control after Graco notified them that the subject noncompliance existed.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35600]

Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc.; Continuance in Control Exemption; Santa Teresa Southern Railroad, LLC

Gregory B. Cundiff, Connie Cundiff, CGX, Inc. (CGX) and Ironhorse Resources, Inc. (Ironhorse) (collectively, parties) have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Santa Teresa Southern Railroad, LLC (STSR), upon STSR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Santa Teresa Southern Railroad, LLC—Operation Exemption—Rail Line of Verde Logistics Railroad, LLC at Santa Teresa, Dona Ana County, N.M.,* Docket No. FD 35599, wherein STSR seeks Board approval to operate over approximately 12,000 feet of rail line owned by Verde Logistics Railroad, LLC in Santa Teresa, N.M.

The parties intend to consummate the transaction no sooner than 30 days after filing their notice with the Board (March 22, 2012).

CGX, a noncarrier holding company, is owned by Gregory B. Cundiff and Connie Cundiff. CGX owns Ironhorse, also a noncarrier holding company. CGX owns the following Class III rail carriers: Crystal City Railroad, Inc.; Lone Star Railroad, Inc.; Rio Valley Railroad, Inc.; and Mississippi Tennessee Holdings, LLC. Ironhorse owns the following Class III rail carriers: Rio Valley Switching Company; Southern Switching Company; Mississippi Tennessee Railroad, LLC; Gardendale Railroad, Inc.; and STSR.

The parties represent that: (1) The rail line to be operated by STSR will not

connect with any of the railroads owned by CGX or Ironhorse; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines with any other railroads in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The parties state that the purpose of the proposed transaction is the achievement of operating efficiency and economy.

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. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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 March 15, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35600, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 5, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–5662 Filed 3–7–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35599]

Santa Teresa Southern Railroad, LLC—Operation Exemption—Rail Line of Verde Logistics Railroad, LLC at Santa Teresa, Dona Ana County, NM

Santa Teresa Southern Railroad, LLC (STSR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 12,000 feet of rail line owned by Verde Logistics Railroad, LLC (Verde). The rail line extends between a point of connection with Union Pacific Railroad Company (UP) at or near milepost 1280 on UP's Lordsburg Subdivision and terminus at Strauss Road [1] at or near Santa Teresa, Dona Ana County, N.M. STSR states that it has entered into an Operating Agreement with Verde for STSR to provide common carrier rail service to shippers and receivers located in the Santa Teresa Logistics Industrial Park.

This transaction is related to a concurrently filed verified notice of exemption in *Gregory B. Cundiff, et al.—Continuance in Control Exemption—Santa Teresa Southern Railroad, LLC,* Docket No. FD 35600, wherein Mr. Gregory B. Cundiff and others seek Board approval to continue in control of STSR upon STSR's becoming a Class III rail carrier.

According to STSR, the transaction is expected to be consummated no sooner than 30 days after filing its notice with the Board. The earliest this transaction can be consummated is March 22, 2012, the effective date of the exemption (30 days after the notice of exemption was filed).

STSR certifies that its projected annual revenues as a result of this transaction will not exceed $5 million and will not result in its becoming a Class I or Class II rail carrier.

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 March 15, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35599, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 5, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–5660 Filed 3–7–12; 8:45 am]

BILLING CODE 4915–01–P

[1] STSR states that Strauss Road has been designed but has not yet been constructed.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35601]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement, Union Pacific Railroad Company (UP) has agreed to grant trackage rights to BNSF Railway Company (BNSF) over a portion of a line of railroad known as the Lockport Branch, between milepost 0.1 at Raceland Junction and milepost 14.2 at Jay, a distance of 14.1 miles, in Lafourche Parish, La. (the Line).[1]

The earliest this transaction may be consummated is March 22, 2012, the effective date of the exemption (30 days after the notice was filed).

BNSF states that it is seeking trackage rights authority to protect its interests in the Lockport Branch. In Docket No. AB 33 (Sub-No. 277X), UP filed a verified notice of exemption to abandon most of the Lockport Branch over which BNSF now seeks trackage rights authority.[2] BNSF has asserted, in that abandonment proceeding, that it has authority sanctioned by the Board to provide service on the Line. UP has contested

[1] A copy of the trackage rights agreement was submitted with the notice of exemption. BNSF states that this agreement, dated August 1, 2000 (First Supplemental Agreement), is a supplement to the Trackage Rights Agreement dated September 10, 1998, between UP and BNSF, which was authorized by the Board in *Burlington Northern & Santa Fe Railway Co.—Trackage Rights Exemption—Union Pacific Railroad Co.,* FD 33663 (STB served Oct. 19, 1998). BNSF adds that, while the First Supplemental Agreement covers all former Southern Pacific Transportation Company branches connecting to the rail line between Dawes, Tex., and Avondale, La., in this proceeding BNSF seeks trackage rights authority only over the portion of the Lockport Branch between milepost 0.1 and milepost 14.2.

[2] Specifically, UP seeks authority to abandon the portion of the Lockport Branch between milepost 1.7 and milepost 14.2.

BNSF's claim, and by decision served on January 30, 2012, the Board postponed the effective date of UP's abandonment exemption and allowed the parties to file additional evidence and argument, which BNSF and UP did on February 9, 2012. In its verified notice of exemption in this docket, BNSF describes UP's February 9 filing in the abandonment docket as asserting that BNSF does not have direct access to the Lockport Branch because the Board never expressly authorized such operations. BNSF states that, while it disagrees with UP's argument, it is now seeking trackage rights authority over the Line in this docket out of an abundance of caution.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway Co.—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the 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. Stay petitions must be filed by March 15, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35601, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005 (Counsel for BNSF).

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 5, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–5663 Filed 3–7–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable On Federal Bonds: Name, Address and Phone Number Change: Van Tol Surety Company, Incorporated (NAIC #30279)

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Van Tol Surety Company, Incorporated (NAIC #30279) has changed its name to Boston Indemnity Company, Inc., effective January 3, 2012. In addition, the new address is 300 Brickstone Square, Ste. 201, Andover, Massachusetts 01810. The new phone number is (978) 662–5131. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 27, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2012–5532 Filed 3–7–12; 8:45 am]

BILLING CODE 4810–35–M

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Northern Spotted Owl; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2011–0112; 4500030114]

RIN 1018–AX69

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to revise the designated critical habitat for the northern spotted owl (*Strix occidentalis caurina*) under the Endangered Species Act of 1973, as amended (Act). Consistent with the best scientific data available, the standards of the Act, our regulations, and agency practice, we have initially identified, for public comment, approximately 13,962,449 acres (ac) (5,649,660 hectares (ha)) in 11 units and 63 subunits in California, Oregon, and Washington that meet the definition of critical habitat. In addition, however, the Act provides the Secretary with the discretion to exclude certain areas from the final designation after taking into consideration economic impacts, impacts on national security, and any other relevant impacts of specifying any particular area as critical habitat. We have identified and are considering a number of specific alternatives in this proposed rulemaking based on potential exclusions from the final rule. First, of the total area identified, we propose to exclude from the final designation approximately 2,631,736 ac (1,065,026 ha) of National Park lands, Federal Wilderness Areas, and other Congressionally reserved natural areas, as well as 164,776 ac (66,682 ha) of State Park lands. Second, we propose to exclude from a final designation approximately 936,816 ac (379,116 ha) of State and private lands that have a Habitat Conservation Plan, Safe Harbor Agreement, conservation easement, or similar conservation protection. And third, we are considering exclusion of an additional 838,344 ac (339,266 ha) of other non-Federal lands from the final designation.

These specific alternatives will be considered on an individual basis or in any combination thereof. In addition, the final designation may not be limited to these alternatives, but may also consider other exclusions as a result of continuing analysis of relevant considerations (both scientific and economic, as required by the Act) and the public comment process. In particular, we solicit comments from the public on the physical and biological features currently identified in this proposal as being essential for the conservation of the species, whether all of the areas identified meet the definition of critical habitat, whether other areas would meet that definition, whether to make the specific exclusions we have proposed, and whether there are other areas that are appropriate for exclusion.

DATES: We will accept comments received or postmarked on or before June 6, 2012. Please note that if you are submitting comments electronically, the deadline is midnight Eastern Standard Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by April 23, 2012. At this time we are anticipating holding a total of at least three public information meetings, one each in the States of California, Oregon, and Washington, on this proposed rule. The dates and times of these meetings will be announced concurrent with the notice of availability of the draft economic analysis on this proposed revised designation of critical habitat and reopening of the public comment period. Public information meetings allow the public the opportunity to learn and ask questions about the proposed critical habitat designation, as well as the draft economic analysis. An information meeting is not the same as a public hearing, which allows the public to submit comments for the official record, but generally does not provide for the exchange of information between the public and representatives of the agency. Comments may always be submitted, however, either electronically or by mail (see **ADDRESSES**) during any open public comment period.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R1–ES–2011–0112, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2011–0112; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave, Suite 100, Portland, Oregon 97266; telephone 503–231–6179; facsimile 503–231–6195. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this proposed revised critical habitat designation is: (1) To identify those geographic areas occupied at the time of listing that contain the physical or biological features essential to the conservation of the spotted owl; (2) to determine whether these features may require special management considerations or protection and provide general information on the types of management that may be appropriate consistent with the conservation of the owl; and (3) to identify any areas that may have been unoccupied at the time of listing, but that are nonetheless essential to the conservation and recovery of the owl. This proposed revised designation of critical habitat identifies all of the areas that we have initially determined meet the definition of critical habitat for the northern spotted owl. Federal lands comprise the strong majority of the area, but some State and private lands are also identified.

Under section 7(a)(2) of the Act, Federal agencies must, in consultation with and with the assistance of the Service, ensure that any action authorized, funded or carried out by that Federal agency is not likely to jeopardize the continued existence of a listed species (this is referred to as the ''jeopardy standard''). Once finalized, the effect of designation of critical habitat for a listed species is to require that Federal agencies additionally ensure that their actions are not likely to result in the destruction or adverse modification of that critical habitat. In areas where northern spotted owls occur, including areas identified as meeting the definition of critical habitat in this proposed rule, Federal agencies such as the U.S. Forest Service and Bureau of Land Management are already

consulting with the Service on the potential effects of their proposed actions under the ''jeopardy standard,'' regardless of whether these lands are currently designated as critical habitat. Aside from this requirement specific to Federal agencies, critical habitat designations do not provide additional regulatory protection for a species on non-Federal lands, unless the proposed activities involve Federal funding or permitting. In other words, designation of private or other non-Federal lands as critical habitat has no direct regulatory impact unless there is such a Federal connection. Although we anticipate that the effects on private landowners would not be significant, we acknowledge that there may be significant benefits to excluding private lands; we particularly request comments on whether and to what extent excluding such lands would be consistent with the Act.

While we have initially identified 13,962,449 ac (5,649,660 ha) of lands in the States of Washington, Oregon, and California that meet the definition of critical habitat for the northern spotted owl, it is important to emphasize that for several reasons, the number of acres actually included in the final designation may vary significantly from what is in this proposed revised designation. First, our conclusions as to what areas meet the Act's definition of ''critical habitat'' may change based on public comment and further analysis. Second, we may determine that military lands proposed for designation may qualify for an exemption from designation pursuant to section 4(a)(3)(B)(i) of the Act. Third, the Secretary may exclude certain areas from the final designation based on a thorough balancing analysis, including consideration of economic impacts, pursuant to section 4(b)(2) of the Act. In all cases, and without prejudging the consideration of further analysis and public comments, we anticipate a final designation that may be significantly smaller than the area currently identified.

The Act provides that critical habitat shall be designated after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Section 4(b)(2) of the Act provides that the Secretary may exclude any area from critical habitat if he determines that the benefits of excluding that area outweigh the benefits of including it in the designation, unless such an exclusion would result in the extinction of the species. This ''weighing'' of considerations under section 4(b)(2) of the Act is the next step in the designation process, in which the Secretary may consider particular areas for exclusion from the final designation. In this proposed rule, we have already identified 4,571,672 ac (1,850,090 ha) of lands that we will specifically consider for exclusion from the final designation of critical habitat.

The final designation may reflect a variety of possible combinations of exclusions. The public is invited to comment on the possible exclusion of any areas proposed, but in particular those areas we have identified as those we propose to exclude and those we may additionally consider for exclusion from the final designation of critical habitat. After evaluating public comment and carefully analyzing and weighing all appropriate factors, a variety of potential outcomes are possible in the final designation.

This proposed revised critical habitat designation includes a diverse forest landscape that contains several different forest ecosystems and thousands of plant and animal species. Consistent with the best available science and the adaptive management principles outlined in the Revised Recovery Plan for the Northern Spotted Owl, we strongly encourage the application of ecosystem management principles and active forest management to ensure the long-term conservation of the northern spotted owl and its habitat, as well as other species dependent on these shared ecosystems. While proposed Federal actions must comply with requirements of the Act, actions with some short-term adverse impacts to spotted owls and critical habitat, but whose effect is to conserve or restore natural ecological processes and enhance forest resilience in the long term, should generally be consistent with the goals of critical habitat management. These management approaches are intended to be consistent with the principles of Executive Order 13563, which, as noted, directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. E.O. 13563 also further emphasizes that the rulemaking process must allow for public participation and an open exchange of ideas. To the extent feasible and consistent with law, the Service will seek to ensure that the process of designating critical habitat for the Northern Spotted Owl will be based on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

Overview of Northern Spotted Owl Critical Habitat

The northern spotted owl (also variously referred to as simply ''spotted owl'' or ''owl'' in this document) was originally listed as threatened under the Act because of loss of its older growth forest habitat and a declining population (55 FR 26114, June 26, 1990). More recently, competition with barred owls (*Strix varia*) has emerged as a significant additional threat to spotted owl conservation. Experimental management of the barred owl threat is being addressed through a separate decision making process, as discussed further below.

One requirement of the Act, under section 7(a)(2), is that Federal agencies must, in consultation with and with the assistance of the Service, ensure that any action authorized, funded or carried out by that Federal agency is not likely to jeopardize the continued existence of a listed species (this is referred to as the ''jeopardy standard''). Once finalized, the effect of designation of critical habitat for a listed species is to add an independent requirement that Federal agencies ensure that their actions are not likely to result in the destruction or adverse modification of that critical habitat. Thus, in areas where northern spotted owls occur, including most areas included in this proposed rule, Federal agencies such as the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) are already consulting with the Service on the potential effects of their proposed actions under the ''jeopardy standard,'' regardless of whether these lands are currently designated as critical habitat. Aside from this requirement specific to Federal agencies, critical habitat designations do not provide additional regulatory protection for a species on non-Federal lands, unless the activities proposed involve Federal funding or permitting. In other words, designation of private or other non-Federal lands as critical habitat has no direct regulatory impact on the use of that land unless there is such a Federal connection. Identifying non-Federal lands that are essential to the conservation of a species may nonetheless be relevant, in that it alerts State and local government agencies and private landowners to the value of the habitat, and may help facilitate voluntary conservation partnerships such as Safe Harbor Agreements and Habitat Conservation Plans that may contribute to the recovery and delisting of the species.

To comply with the statutory requirements of the Act, we begin by identifying the areas that meet the

definition of ''critical habitat.'' Notably, however, section 4 of the Act also requires us to consider the economic impacts, impacts on national security, and other relevant impacts of specifying any particular areas as critical habitat before we make our final designation. This process is summarized below in the section *An Introductory Background of the Critical Habitat Process,* and is detailed in the Exclusions section of this document.

In general, we recommend that critical habitat for the northern spotted owl should follow these basic management recommendations (detailed further in the Revised Recovery Plan for the Northern Spotted Owl, USFWS 2011; hereafter ''Revised Recovery Plan''):

1. Conserve the older growth, high quality and occupied forest habitat as necessary to meet recovery goals.
2. Implement science-based, active vegetation management to restore forest health, especially in drier forests in the eastern and southern portions of the owl's range.
3. Encourage landscape-level planning and vegetation management that allow historical ecological processes, such as characteristic fire regimes and natural forest succession, to occur on these landscapes throughout the range of the owl. This approach has the best chance of resulting in forests that are resilient to future changes that may arise due to climate change.

These general recommendations are consistent with the underlying purpose of the Act. Section 2(b) of the Act states, in part: ''The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' A fundamental goal of critical habitat management is not only to conserve the listed species, but also to conserve the ecosystem upon which that species depends. This is the case with the northern spotted owl.

An ''ecosystem'' is a biological community of interacting organisms and their physical environment, or as the complex of a community of organisms and its environment functioning as an ecological unit (Krebs 1972, pp. 10–11; Ricklefs 1979, pp. 31–32, 869). These ecosystem interactions and functions are often referred to as ecological ''relationships'' or ''processes.'' Thus, to conserve the northern spotted owl as directed by the Act, one must also conserve the ecological processes that occur within the ecological landscape inhabited by the species. These natural processes—such as vegetation succession, forest fire regimes, and nutrient cycling—create and shape the physical and biological features that form the foundation of critical habitat. A complex interaction of physical and biological factors contribute to the development and maintenance of these ecosystems, which in turn provide the northern spotted owl with the environmental conditions required for its conservation and survival. A fundamental goal of critical habitat management should thus be to understand, describe, and conserve these processes. This ''ecosystem approach'' of management will ultimately have the highest likelihood of conserving listed species such as the northern spotted owl in the long term (Knight 1998, p. 43).

Service policy also endorses this approach: ''Species will be conserved best not by a species-by-species approach but by an ecosystem conservation strategy that transcends individual species'' (59 FR 34724, July 1, 1994). The Service considers this ecosystem approach in critical habitat designations for other listed species (e.g., in Hawaii (75 FR 18960, April 13, 2010; 76 FR 46362, August 2, 2011)). Likewise, the U.S. Forest Service, which manages the great majority of the proposed revised areas initially meeting the definition of northern spotted owl critical habitat, has prioritized restoring and maintaining natural ecological function and resiliency to its forest lands (Blate *et al.* 2009, entire; USDA 2010, entire; Tidwell 2011, entire). Active management of critical habitat is intended to be fully compatible and consistent with these landscape-level ecosystem conservation efforts.

This proposed revised critical habitat designation includes a diverse forest landscape that contains several different forest ecosystems and thousands of plant and animal species. It ranges from dry, fire-prone forests to moist old-growth conifer forest to a mix of conifers and hardwood trees. Thousands of species occur in these forest ecosystems, including other listed species with very specific biological needs. Prescribed management for all of these needs at the species level on large landscapes will raise a number of challenges (Thompson *et al.* 2009, p. 29). Many scientists believe a single-species approach to forest management is limited and that land managers need to focus on broader landscape goals that address ecosystem process and future habitat conditions (see, e.g., Thomas *et al.* 2006, p. 286; Boyd *et al.* 2008, p. 42; Hobbs *et al.* 2010, p. 487; Mori 2011, pp. 289–290). We strongly encourage the application of ecosystem management principles and active forest management to ensure the long-term conservation of the northern spotted owl and its habitat, as well as other species dependent on these shared ecosystems.

Another important development that would inform spotted owl critical habitat management involves changes in forestry science. Emulating natural disturbance regimes is emerging as a dominant paradigm in North American forest management (Seymour and Hunter 1999, p. 56; Long 2009, p. 1868). This change is occurring in response to (1) the simplification of forests in terms of structure, age-class diversity, and species composition as a result of management for timber production and (2) a recognition of fundamental changes in ecosystem function and processes due to land management practices, especially fire and successional patterns (Franklin *et al.* 2002, pp. 402–408; Hessburg *et al.* 2005, pp. 134–135; Drever *et al.* 2006, p. 2291). Although active vegetation management is unlikely to precisely mimic natural forest disturbance in all ways, it can be used to better maintain the resilience of landscapes and wildlife populations to respond to natural disturbance and climate change (Lindenmayer *et al.* 2008, p. 87). In general, silviculture prescriptions that apply ecological forestry principles to address the conservation of broader ecological processes are compatible with maintaining the proposed critical habitat's essential features in the long term (USFWS 2011, p. III–14).

Explicitly prescribing such management at a fine scale (e.g., forest stand level) is beyond the scope of this document and should be developed at the appropriate land management unit (e.g., National Forest or BLM District; USDA 2010, entire) and through consultation with the Service, as appropriate. While proposed Federal actions must comply with requirements of section 7 of the Act, which requires consideration of short as well as long-term impacts to species and their critical habitat, as described below and in the Revised Recovery Plan, management actions with some short term adverse impacts to spotted owls and critical habitat, but whose effect is to conserve or restore natural ecological processes and enhance forest resilience in the long term, should generally be consistent with the goals of critical habitat management (USFWS 2011, p. III 11–39). The Service has recently approved these types of management actions in occupied spotted owl habitat on BLM and USFS lands.

Specific considerations for managing within spotted owl critical habitat are discussed in more detail in the Special Management Considerations and

Adverse Modification sections later in this document. In sum, vegetation and fuels management in dry and mixed-dry forests is strongly encouraged both within and outside designated critical habitat where the effect of such treatment is to conserve natural ecological processes or restore them (including fire) where they have been modified or suppressed (Allen *et al.* 2002, pp. 1429–1430; Spies *et al.* 2006, pp. 358–361; Fielder *et al.* 2007, entire; Prather *et al.* 2008, entire; Lindenmayer *et al.* 2009, p. 274; Tidwell 2011, entire). Likewise, in moist and some mixed forests, management of spotted owl critical habitat should be compatible with broader ecological goals, such as the retention of high-quality older forest, the continued treatment of young or homogenous forest plantations, and the conservation or restoration of complex early seral forest habitat (Spies *et al.* 2007b, pp. 57–63; Betts *et al.* 2010, pp. 2117, 2126–2127; Swanson *et al.* 2010, entire). In general, actions that promote ecological restoration and those that apply ecological forestry principles as described in the Revised Recovery Plan (USFWS 2011, pp. III–11 to III–41) and later in this document are likely to be consistent with the conservation of the northern spotted owl and the management of its critical habitat.

In conclusion, the designation and management of critical habitat for the spotted owl must be compatible with these broader landscape management goals if it is to conserve the spotted owl as required by the Act. It is therefore important to emphasize that spotted owl critical habitat should not be a ''hands off'' reserve in the traditional sense. Rather, it should be a ''hands on'' ecosystem management landscape that should include a mix of active and passive actions to meet a variety of forest conservation goals that support long-term spotted owl conservation. It would be inconsistent with the stated purposes of the Act, the Revised Recovery Plan (USFWS 2011), and the goals of the Northwest Forest Plan (NWFP) if spotted owl critical habitat was narrowly managed and, in so doing, discouraged land managers from implementing scientifically justified measures for conserving forest ecosystem functions and health.

An Introductory Background of the Critical Habitat Process

Section 4(a)(3) of the Act specifies that the Service shall designate critical habitat for endangered or threatened species and may, from time-time thereafter as appropriate, revise such designation. Critical habitat is defined as (1) 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 that are essential to the conservation of the listed species and 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 that are essential for the conservation of a listed species. Our regulations direct us to focus on the ''primary constituent elements,'' or PCEs, in identifying these physical or biological features.

As part of our rulemaking process, we identify what types of activities on Federal lands, or what activities involving a Federal nexus, may be affected within the proposed critical habitat area and would require consultation under section 7(a)(2) of the Act. Although we are in the process of developing an economic analysis specific to this proposed revision of critical habitat, the economic analysis for the 2008 designation of critical habitat for the northern spotted owl may be informative in terms of providing the categories of activities identified as those that may be affected within critical habitat. For the 2008 critical habitat, those initially included: (1) Timber management, (2) barred owl management and control, (3) northern spotted owl surveys and monitoring, (4) fire management, (5) linear projects (i.e., transportation, pipelines, and powerlines), (6) restoration, and (7) recreation. However, the effects on fire management, linear projects, restoration, and recreation were found to range from minimal to none. As a consequence, the 2008 economic analysis concluded that there were four categories of potential impacts from critical habitat for the northern spotted owl: (1) Impacts to timber management; (2) impacts to survey and monitoring activities; (3) impacts to barred owl management; and (4) costs related to consultations under section 7 of the Act.

Some specific examples of timber management and commercial timber harvesting activities that may be affected by the designation of critical habitat include, but are not limited to: Traditional clearcutting; targeted variable retention harvest; pre-commercial or commercial thinning; variable thinning in single-story, uniform forest stands; reduction of fuels in order to reduce the effect of wildfires; hazard tree removal; removal of younger, shade-intolerant conifers to reduce competition with larger, legacy conifers; and silvicultural treatments. Some of these activities may have short-term negative impacts to the owl, but long-term benefits by creating higher quality habitat. These activities and possible effects are discussed below in more detail (see Effects of Critical Habitat Designation, *Section 7 Consultation*). As described in this proposed rule, we anticipate that, in general, actions that promote ecological restoration and those that apply ecological forestry principles as described in the Revised Recovery Plan (USFWS 2011, pp. III–11 to III–41) and later in this document are likely to be consistent with the conservation of the northern spotted owl and the management of its critical habitat.

Any proposed designation of critical habitat begins with the identification of all specific areas that contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection (this applies to areas occupied at the time of listing), and all areas that the Secretary has otherwise determined to be essential to the conservation of the species (this applies to areas unoccupied by the species at the time of listing). The initial identification of these lands is based on the best available scientific information. After we have identified the lands that meet the definition of ''critical habitat,'' we consider the potential economic, national security, or other relevant impacts of the designation. Under section 4(b)(2) of the Act, we may identify any lands for which we believe the benefits of exclusion may outweigh the benefits of inclusion, and solicit public comment on our consideration of those particular lands for exclusion or exemption from the final designation, as we have done in this proposed rule.

In addition, section 4(a)(3)(B)(i) of the Act species that the Secretary shall not designate any lands as critical habitat owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. Such lands may be exempted from the designation of critical habitat, which is a separate process from the exclusion of lands under section 4(b)(2) of the Act.

The Critical Habitat Process for the Proposed Revised Designation of Critical Habitat for the Northern Spotted Owl

For this proposed revised designation of critical habitat for the northern spotted owl, we used the integrated habitat conservation planning framework developed in the Revised Recovery Plan for the Northern Spotted

Owl (USFWS 2011, Appendix C) as one key source of information. This framework integrates a spotted owl habitat model, a habitat conservation planning model, and a population simulation model that collectively allowed us to compare estimated spotted owl population performance among alternative habitat conservation network scenarios under a variety of potential conditions. This process specifically incorporated consideration of the physical or biological features and allowed us to determine the quantity and distribution or spatial arrangement of these features that are essential to the conservation of the northern spotted owl. It also assisted us in identifying habitat that may have been unoccupied at the time of listing but is essential to the species' conservation. Additionally, it allowed us to consider the effect of variables such as habitat change over time and density of barred owls, as well as to evaluate the effect of including different configurations of landownership in the scenarios considered.

Consistent with our statutory obligation to consider the best available science in making decisions, our evaluation of spotted owl population performance, based on various habitat configurations tested, required that we make assumptions regarding some of the model inputs, for example the interaction rate between northern spotted owls and barred owls (all assumptions are explicitly identified in Dunk *et al.* 2012). Given that critical habitat cannot be expected to ameliorate non-habitat based stressors to spotted owl populations, it was necessary to establish reasonable assumptions regarding barred owl encounter rates (the probability that a given spotted owl territory also has barred owls present) that we believed could, along with critical habitat designation, lead to recovery of the northern spotted owl. Absent such an assumption, it would not be possible to identify those areas essential to the conservation of the owl, as the negative effect of barred owls would essentially mask the positive effect of habitat on spotted owl populations. Therefore, as part of the critical habitat modeling process, we established region-specific barred owl encounter rates based on preliminary analyses conducted as part of the modeling process (Dunk *et al.* 2012) and barred owl encounter probabilities estimated from long-term demographic study areas (Forsman *et al.* 2011) within each modeling region. In some areas, we maintained barred owl encounter rates at current levels or allowed them to increase slightly. In others, we used encounter rates that were less than current levels, but at levels we believed could potentially be maintained through management activities.

It is important to recognize that the barred owl encounter probabilities we established for modeling purposes do not represent predictions about conditions that will be achieved through management actions, or that they are an estimate of what is likely to occur in the future. Instead, the assumed barred owl encounter probabilities were used to identify the critical habitat that is essential to recovery of the northern spotted owl, assuming that other, non-habitat based threats to the species have been addressed. We invite public comment on the process we used to evaluate barred owl effects on critical habitat.

The Service is currently in the process of preparing an Environmental Impact Statement (EIS) that will serve as the basis for a decision on whether to move forward with a study on the experimental removal of barred owls. We will release the EIS for public review and comment in the near future. If we decide to proceed with this study, we will likely implement it over a period of approximately 4 to 10 years. Furthermore, if we decide to proceed with this experimental removal study, that decision will not include a determination on whether or how barred owls would be managed in the long term; we will make that decision only after further evaluation of the results from our initial study. Barred owls are already present across most, if not all, of the landscape being proposed as revised critical habitat, and in many cases both spotted owls and barred owls are occupying the same forest lands. By designating additional habitat distributed across the range of the subspecies, our goal is to increase the likelihood that spotted owls will be able to persist in areas where barred owls are also present. With regard to how possible future management of the barred owl could affect the need for critical habitat for the spotted owl, if, through experimental removal studies or otherwise, we learn how to manage barred owls for the benefit of spotted owls, and if such management efforts are undertaken and result in a reduction in the amount of habitat essential to the conservation of the northern spotted owl, the Service may at that point consider revising critical habitat.

Each of the three models used in our integrated conservation planning framework helped identify an important element of the statutory definition of critical habitat: The identification of physical or biological features needed by the northern spotted owl, and the distribution of those features across the geographical range of the species; and the identification of a landscape configuration where these features, as well as any necessary unoccupied areas, are essential to the conservation of the species. In all cases, we attempted to maximize reliance on public lands, looking first to Federal lands and secondarily to State lands, and incorporated private lands only when Federal and State lands were insufficient to meet the recovery needs of the species. We then evaluated the population performance of each habitat configuration considered against the recovery criteria as set forth in the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011, p. ix).

Following the application of the modeling framework, we further refined the model-based map units after considering land-ownership patterns, interagency coordination, and best professional judgment, with the objective of increasing the efficiency and effectiveness of the critical habitat proposal. We again used the population simulation model to evaluate whether the habitat network, as refined, continued to provide what is essential to the conservation of the northern spotted owl. The details of this process are presented in this proposed rule in the section ''Criteria Used to Identify Critical Habitat,'' and are provided in greater detail in our supporting document ''Modeling and Analysis Procedures Used to Identify and Evaluate Potential Critical Habitat Networks for the Northern Spotted Owl,'' (Dunk *et al.* 2012), available online at *http://www.regulations.gov* (see **ADDRESSES**), or by contacting our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). The latter document in particular describes the specific assumptions and uncertainties associated with the modeling process, and we invite public comment on these assumptions and uncertainties. We further invite public comment on those areas we have identified here as providing the physical or biological features essential the conservation of the owl, or that have been otherwise determined to be essential to the conservation of the species.

As a result of this process, this proposed revised designation of critical habitat includes all of the areas that we have determined meet the definition of critical habitat for the northern spotted owl. Federal lands comprise the majority of the proposed revised designation, but some State and private

lands are also identified. As required by section 4(b)(2) of the Act, we have used the best scientific data available to identify those areas within the geographical area occupied by the species at the time it was listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. In addition, the Secretary has determined that some areas in a small subset of the proposed revised designation may not have been occupied at the time of listing, but these areas are nevertheless essential to the conservation of the species. While we conclude that the vast majority of lands included in the proposed designation were occupied at the time of listing for the reasons discussed below, we also evaluated them as if they were not occupied and have tentatively determined that all of these lands are essential to the conservation of the species. Based on the standards of the Act and our implementing regulations, we have initially identified 13,962,449 acres (5,649,660 ha) of lands in the States of Washington, Oregon, and California that meet the definition of critical habitat for the northern spotted owl.

The specific areas actually included in the final designation may vary significantly from what is in this proposed revised designation for several reasons. First, our conclusions as to what areas meet the Act's definition of ''critical habitat'' may change based on public comment and further analysis. Second, we may determine that military lands proposed for designation may qualify for an exemption from designation pursuant to section 4(a)(3)(B) of the Act. As described below under ''Exemptions,'' Joint Base Lewis-McChord in the State of Washington is currently in the process of revising its INRMP, and is under consideration for exemption from the final designation of critical habitat. Third, the Secretary may exercise his discretion to exclude certain areas from the final designation based on a thorough balancing analysis pursuant to section 4(b)(2) of the Act. In all cases, we anticipate a final designation that may be smaller than the current proposed revised designation. The proposed revised designation may be taken as a maximum in the sense that, in no case, with the exception of minor boundary adjustments, would the final designation include lands not included in the proposed rule without first providing the opportunity for public notice and comments with respect to such additional lands.

As described above, the Act provides that critical habitat shall be designated after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Section 4(b)(2) of the Act provides that the Secretary may exclude any area from critical habitat if he determines that the benefits of excluding that area outweigh the benefits of including it in the designation, unless such an exclusion would result in the extinction of the species. This ''weighing'' of considerations under section 4(b)(2) of the Act is the next step in the designation process, in which the Secretary may consider particular areas for exclusion from the final designation. In this proposed revised designation of critical habitat, we have already identified 4,571,672 ac (1,850,090 ha) of lands that we will consider for exclusion from the final designation of critical habitat. We note that Executive Order 13563 states that to the extent permitted by law, each agency must ''tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives,'' and that each agency ''shall identify and consider regulatory burdens that reduce burdens and maintain flexibility and freedom of choice for the public.''

The final designation may reflect a variety of possible combinations of exclusions (We note that in 1991, the initial proposal was for 11.6 million acres of critical habitat (May 6, 1991, 56 FR 20816), but the final rule identified 6.9 million acres (January 15, 1992, 57 FR 1796), a decrease of 40 percent). The public is invited to comment on the possible exclusion of any areas proposed, but in particular those areas we have identified as those we propose to exclude and those we may additionally consider to exclude from the final designation of critical habitat. After evaluating public comment and carefully analyzing and weighing all appropriate factors, a variety of potential outcomes is possible in the final designation. The following represents a range of some possible outcomes that may result from the critical habitat designation process. In all cases, and without prejudging the consideration of further analysis and public comments, we anticipate a final designation that may be significantly smaller than the currently identified area. We emphasize that these are possible outcomes and that we seek comments on alternatives, including those that may involve additional exclusions beyond those specifically identified in this proposal.

Possible Outcome 1. Finalize critical habitat on all lands described as meeting the definition of critical habitat in this proposed revised designation. This outcome would result if the Secretary determines, following public comment and consideration of all possible exclusions and exemptions, that all of the areas proposed as revised critical habitat still meet the definition of critical habitat, and no areas are excluded or exempted from the final designation. In this outcome, the final designation would be 13,962,449 ac (5,649,660 ha).

Possible Outcome 2. Finalize critical habitat by excluding all private and State lands with active conservation agreements (HCPS, SHAs, and other formal agreements) in place, identified here as proposed for exclusion based on a through balancing analysis under section 4(b)(2) of the Act (see Table 1). This outcome would result if, following public comment and consideration of all possible exclusions, the Secretary determined that, of all of the areas identified here for consideration for possible exclusion, the benefits of excluding those areas with formal conservation agreements that support conservation of the northern spotted owl would be greater than the benefits of including those areas in critical habitat, and if exclusion of those areas did not result in the extinction of the species. In this outcome, the final designation would be 13,025,633 ac (5,271,287 ha).

Possible Outcome 3. Finalize critical habitat by excluding all private and State lands with active conservation agreements (HCPs, SHAs, and other formal agreements) in place, all State parks, and all Congressionally reserved natural areas (e.g., wilderness areas, national scenic areas, national parks) based on a through balancing analysis under section 4(b)(2) of the Act (see Table 1). This outcome would result if, following public comment and consideration of all possible exclusions, the Secretary determined that of all of the areas identified here as proposed for exclusion, the benefits of excluding those areas with formal conservation agreements that support conservation of the northern spotted owl, as well as the benefits of excluding those State parks and Federal natural areas managed as parks or wilderness, would be greater than the benefits of including those areas in critical habitat, and if exclusion of those areas did not result in the extinction of the species. In this outcome, the final designation would be 10,229,121 ac (4,139,578 ha). Figures 1

through 3 demonstrate what the final critical habitat designation would be if all exclusions proposed in this proposed revised rule were finalized.

Possible Outcome 4. Finalize critical habitat by excluding all private lands, all State lands, and all Congressionally reserved natural areas based on a through balancing analysis under section 4(b)(2) of the Act (see Table 1). This outcome would result if, following public comment and consideration of all possible exclusions, the Secretary determined that of all of the areas identified here for consideration for possible exclusion, the benefits of excluding all private lands, State lands, and Federal natural areas managed as parks or wilderness would be greater than the benefits of including those areas in critical habitat. In this outcome, the final designation would be 9,390,777 ac (3,800,313 ha).

We emphasize that there may be significant benefits to excluding private lands; we particularly request comments on whether and to what extent excluding such lands would be consistent with the Act.

There is, of course, a Possible Outcome 5, which would involve greater exclusions than those identified in Possible Outcome 4. As noted, we request public comments on any such potential exclusions, and the underlying law and science that would support such exclusions. In considering the various possible outcomes, we will focus on the requirements of the Act and to the extent consistent with law, the requirements of Executive Order 13563 and in particular its emphasis on public participation, on imposing the least burden on society, and on maintaining flexibility and freedom of choice for the public.

TABLE 1—LANDS PROPOSED OR CONSIDERED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION UNDER VARIOUS POSSIBLE OUTCOMES OF THIS PROPOSED RULE

	Acres (hectares) proposed or considered for exclusion	Acres (hectares) in potential final designation
Possible Outcome 1:		
No exclusions		13,962,449 ac (5,649,660 ha)
Possible Outcome 2:		
Excludes private lands with conservation agreements (HCPs, SHAs, and other formal agreements) proposed for exclusion.	711,803 ac (288,059 ha).	
Excludes State lands with conservation agreements (HCPs, SHAs, or other formal agreements) proposed for exclusion.	225,013 (91,059 ha).	
Subtotal	*936,816 ac*	13,025,633 ac
	(379,116 ha)	(5,271,287 ha)
Possible Outcome 3:		
Excludes private lands with conservation agreements (HCPs, SHAs, and other formal agreements) proposed for exclusion.	711,803 ac (288,059 ha).	
Excludes State lands with conservation agreements (HCPs, SHAs, or other formal agreements) proposed for exclusion.	225,013 (91,059 ha).	
Excludes State park lands proposed for exclusion	164,776 ac (66,682 ha).	
Excludes Congressionally reserved natural areas proposed for exclusion	2,631,736 ac (1,065,026 ha).	
Subtotal	*3,733,328 ac*	10,229,121 ac
	(1,510,824 ha)	(4,139,578 ha)
Possible Outcome 4:		
Excludes private lands with conservation agreements (HCPs, SHAs, and other formal agreements) proposed for exclusion.	711,803 ac (288,059 ha).	
Excludes State lands with conservation agreements (HCPs, SHAs, or other formal agreements) proposed for exclusion.	225,013 (91,059 ha).	
Excludes State park lands proposed for exclusion	164,776 ac (66,682 ha).	
Excludes Congressionally reserved natural areas proposed for exclusion	2,631,736 ac (1,065,026 ha).	
Excludes all additional private lands without formal conservation agreements under consideration for exclusion.	555,901 ac (224,996 ha).	
Excludes all additional State lands without formal conservation agreements under consideration for exclusion.	281, 247 ac (113,817 ha).	
Subtotal	*4,570,476 ac*	9,391,973 ac
	(1,849,613 ha)	(3,800,812 ha)

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Figure 1.

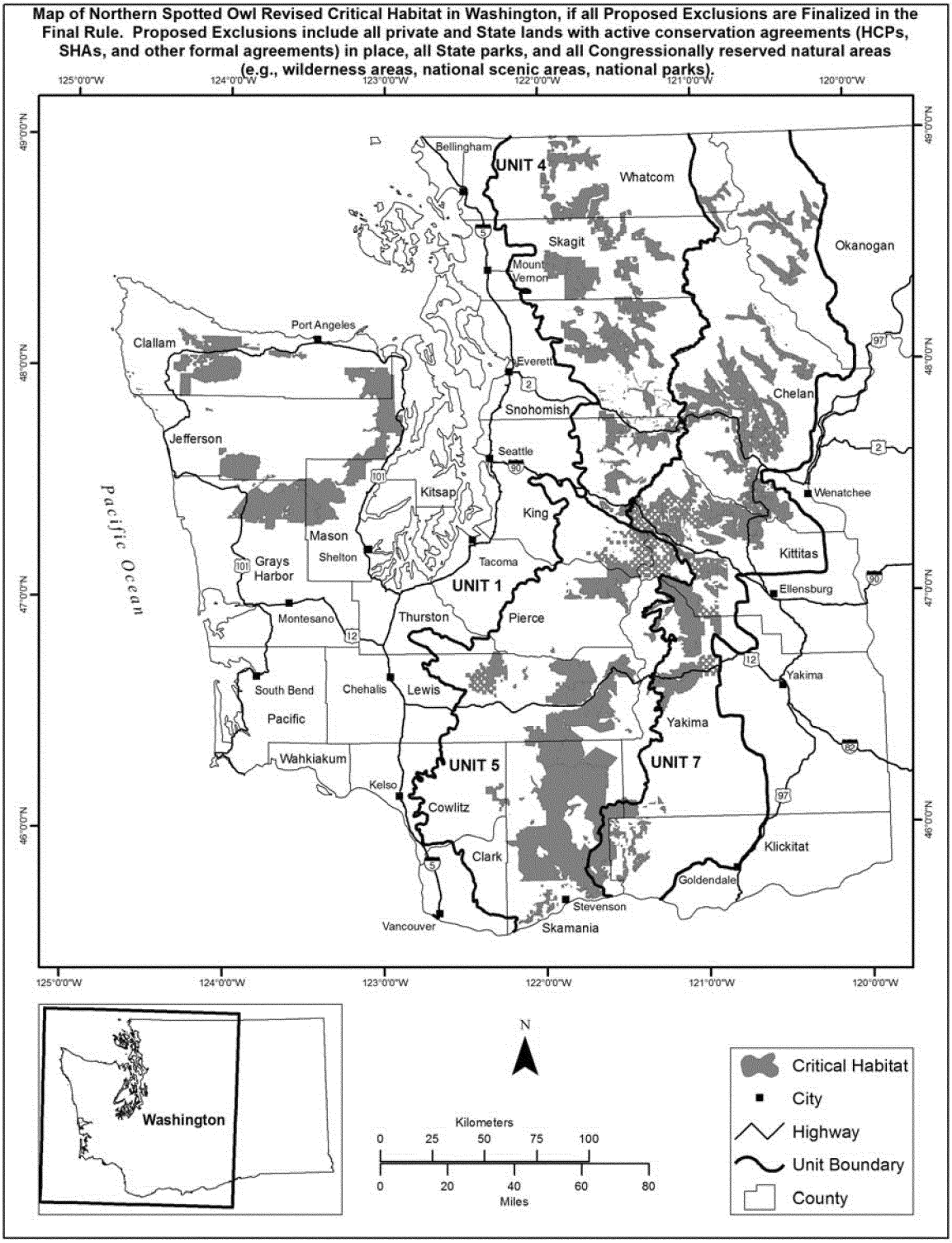

Map of Northern Spotted Owl Revised Critical Habitat in Washington, if all Proposed Exclusions are Finalized in the Final Rule. Proposed Exclusions include all private and State lands with active conservation agreements (HCPs, SHAs, and other formal agreements) in place, all State parks, and all Congressionally reserved natural areas (e.g., wilderness areas, national scenic areas, national parks).
125°0'0"W
124°0'0"W
123°0'0"W
122°0'0"W
121°0'0"W
120°0'0"W
49°0'0"N
48°0'0"N
47°0'0"N
46°0'0"N
Bellingham
UNIT 4
Whatcom
Skagit
Mount Vernon
Okanogan
Port Angeles
Clallam
Everett
Chelan
Snohomish
Jefferson
Seattle
Wenatchee
Kitsap
King
Pacific Ocean
Mason
Shelton
Grays Harbor
Tacoma
Kittitas
UNIT 1
Ellensburg
Montesano
Thurston
Pierce
Yakima
South Bend
Chehalis
Lewis
Pacific
Yakima
Wahkiakum
UNIT 5
UNIT 7
Kelso
Cowlitz
Klickitat
Clark
Goldendale
Stevenson
Vancouver
Skamania
Washington
N
Kilometers
0 25 50 75 100
0 20 40 60 80
Miles
Critical Habitat
City
Highway
Unit Boundary
County

Figure 2.

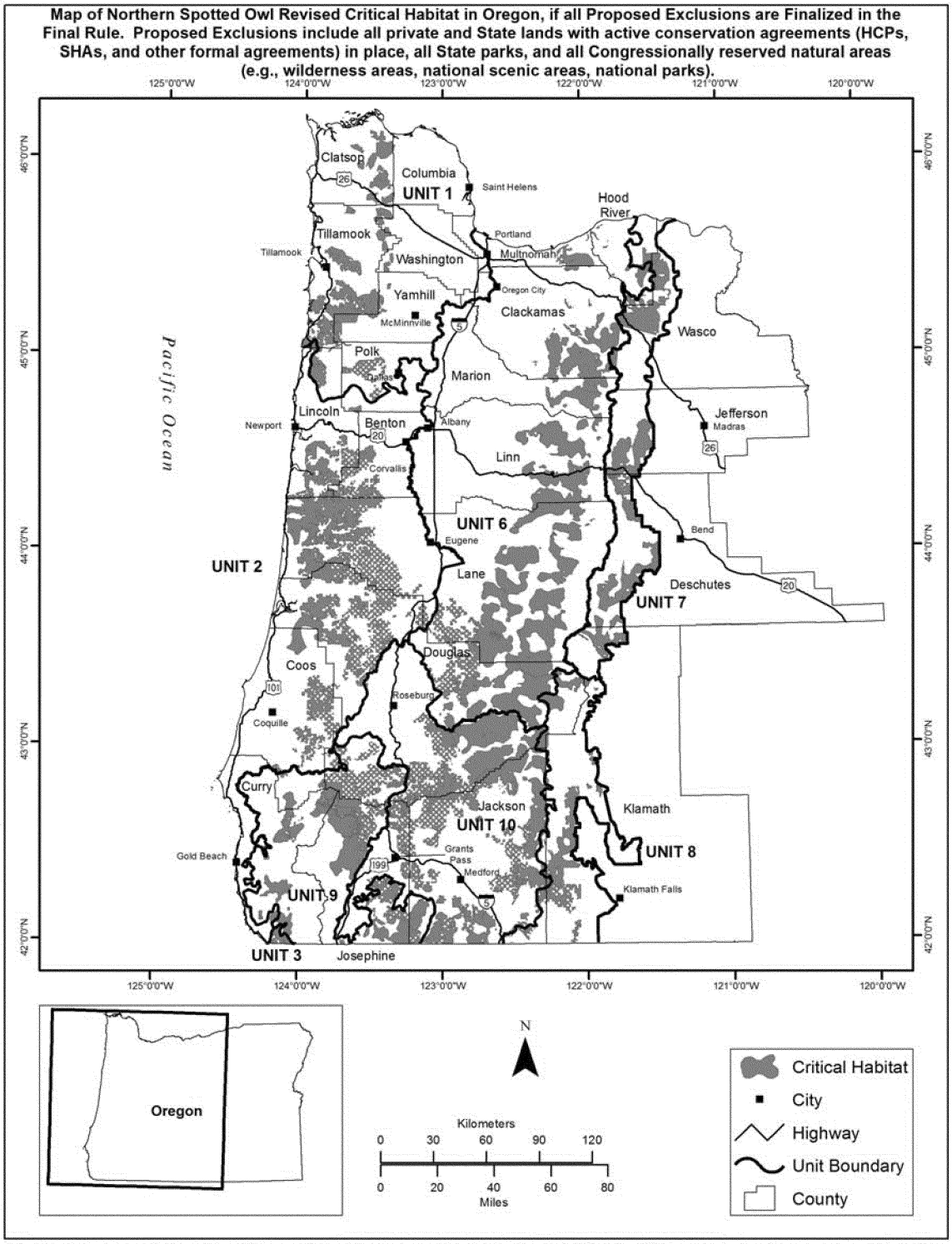
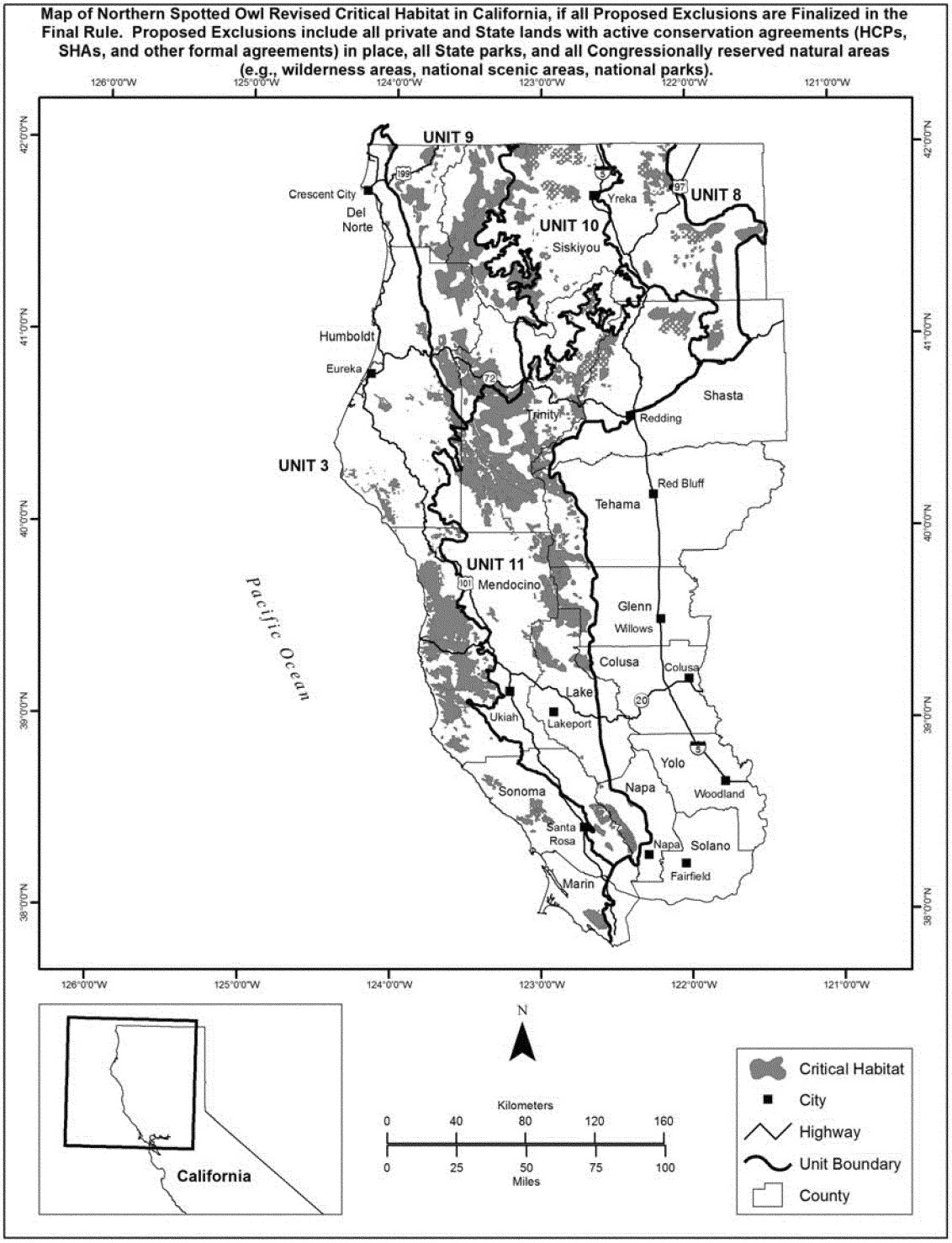

Map of Northern Spotted Owl Revised Critical Habitat in Oregon, if all Proposed Exclusions are Finalized in the Final Rule. Proposed Exclusions include all private and State lands with active conservation agreements (HCPs, SHAs, and other formal agreements) in place, all State parks, and all Congressionally reserved natural areas (e.g., wilderness areas, national scenic areas, national parks).
125°0'0"W
124°0'0"W
123°0'0"W
122°0'0"W
121°0'0"W
120°0'0"W
46°0'0"N
45°0'0"N
44°0'0"N
43°0'0"N
42°0'0"N
Pacific Ocean
Clatsop
Columbia
UNIT 1
Saint Helens
Hood River
Tillamook
Tillamook
Washington
Portland
Multnomah
Yamhill
Oregon City
Clackamas
McMinnville
Wasco
Polk
Dallas
Marion
Lincoln
Newport
Benton
Albany
Jefferson
Madras
Linn
Corvallis
UNIT 6
Eugene
Bend
UNIT 2
Lane
Deschutes
UNIT 7
Douglas
Coos
Roseburg
Coquille
Curry
Jackson
UNIT 10
Klamath
UNIT 8
Gold Beach
Grants Pass
Medford
Klamath Falls
UNIT 9
UNIT 3
Josephine
Oregon
N
Kilometers
0 30 60 90 120
0 20 40 60 80
Miles
Critical Habitat
City
Highway
Unit Boundary
County

Figure 3.



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Public Comment

We intend that any final action resulting from this proposed revised 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 government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Specific information regarding:

(a) The amount and distribution of northern spotted owl habitat;

(b) What areas were occupied at the time of listing and contain features essential to the conservation of the species such that they should be included in the designation and why;

(c) Whether these essential features may require special management considerations or protection and what special management considerations or protection may be needed in critical habitat areas we are proposing;

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why;

(e) Whether we have identified here any areas occupied at the time of listing, but that do not contain features essential to the conservation of the species, and that therefore should not be included in the designation; and

(f) Whether we have identified here any areas that may not have been occupied at the time of listing and that are not essential to the conservation of the species, such that they should not be included in the designation.

(2) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(3) Our proposed approach to effects determinations for the purposes of conducting consultation under section 7(a)(2) of the Act, in particular the application of a 500-ac (200-ha) scale as a screen for a determination of not likely to adversely affect, as described in the section *Determinations of Adverse Effects and Application of the ''Adverse Modification'' Standard.*

(4) Assistance in the identification of any private lands that are not expressly identified as intended for inclusion within critical habitat and that may have inadvertently been included within the designation, due to mapping and modeling limitations, as described in the section ''Proposed Revised Critical Habitat Designation.''

(5) Information on the potential impacts of climate change on the northern spotted owl and proposed critical habitat, and whether special management needs or protections may be needed to address this issue in the critical habitat areas we are proposing.

(6) Any probable economic, national security, or other relevant impacts of designating any area as critical habitat, and in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts. We particularly request information and comments on what activities may occur and the effects to those activities in the proposed revised critical habitat areas. Such information could include:

(a) The extent of possible activities, including temporal and spatial scale, relative to the critical habitat area within which they occur.

(b) The impact of possible activities on the habitat's likelihood of serving its intended conservation function or purpose.

(c) The consistency of possible activities with the intent of the recovery plan or other landscape-level conservation plans.

(7) Whether the benefits of excluding the private and State lands with active conservation agreements (HCPs, SHAs, and other formal agreements) and Congressionally reserved natural areas (e.g., wilderness areas, national scenic areas, national parks) that are proposed for exclusion outweigh the benefits of including them in critical habitat.

(8) Whether the benefits of excluding any other particular area from critical habitat outweigh the benefits of including that area in critical habitat under section 4(b)(2) of the Act, after considering both the potential impacts and benefits of the proposed revised critical habitat designation. We are considering the possible exclusion of non-Federal lands, especially areas in private ownership, in particular, and whether the benefits of exclusion may outweigh the benefits of inclusion of those areas. We, therefore, request specific information on:

(a) The benefits of including any specific areas in the final designation and supporting rationale.

(b) The benefits of excluding any specific areas from the final designation and supporting rationale.

(c) Whether any specific exclusions may result in the extinction of the species and why (see Exclusions section, below).

(d) For private lands in particular, we are interested in information regarding the potential benefits of including private lands in critical habitat versus the benefits of excluding such lands from critical habitat. This information does not need to include a detailed technical analysis of the potential effects of designated critical habitat on private property. In weighing the potential benefits of exclusion versus inclusion of private lands, the Service may consider whether existing partnership agreements provide for the management of spotted owl habitat. We may consider, for example, the status of conservation efforts, the effectiveness of any conservation agreements to conserve the species, and the likelihood of the conservation agreement's future implementation. There may be broad public benefits of encouraging collaborative efforts and encouraging local and private conservation efforts, and these broad benefits are important considerations in our evaluation.

(9) Our process used for identifying those areas that meet the definition of critical habitat for the northern spotted owl, including the assumptions incorporated into the habitat modeling process, as described more fully in the section ''Criteria Used to Identify Critical Habitat'' and also in our supporting documentation (Dunk *et al.* 2012).

(10) 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.

(11) Specific information on ways to improve the clarity of this rule as it pertains to completion of consultations under section 7 of the Endangered Species Act.

Our final determination concerning the revision of northern spotted owl critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. The comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. On the basis of information received, we may, during the development of our final determination, find that areas within the proposed designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion based on a through balancing analysis under section 4(b)(2) of the Act under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat in this proposed rule. For further details regarding northern spotted owl biology

and habitat, population abundance and trend, distribution, demographic features, habitat use and conditions, threats, and conservation measures, please see the Northern Spotted Owl 5 year Review Summary and Evaluation, completed October 26, 2011, and the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011), completed July 1, 2011. Both of these documents are available on the U.S. Fish and Wildlife Service's Endangered Species web site at *http://ecos.fws.gov/;* under ''Species Search,'' enter ''northern spotted owl''). As detailed below, Appendix C of the Revised Recovery Plan is particularly informative, as the habitat modeling process described therein was used to help identify those areas considered essential to the conservation of the northern spotted owl in this proposed revised designation of critical habitat. Furthermore, the recovery criteria for the northern spotted owl, as described in the Revised Recovery Plan (USFWS 2011, pp. I–1 to I–2), helped to discriminate between the various scenarios considered in the modeling process in terms of assessing which of the habitat networks evaluated would contribute most efficiently to the conservation of the northern spotted owl.

The Service recognizes that this proposed revision of critical habitat represents an increase in the total land area identified from previous designations in 1992 (January 15, 1992; 57 FR 1796) and 2008 (August 13, 2008; 73 FR 47325). For a detailed explanation of the changes proposed between this proposed revised designation and the present designation of critical habitat for the northern spotted owl, please see Summary of Changes from Previously Designated Critical Habitat, below.

Introduction

The northern spotted owl inhabits structurally complex forests from southwestern British Columbia through Washington and Oregon to northern California. The northern spotted owl was listed under the Act as a threatened species in 1990 because of widespread loss of habitat across its range and the inadequacy of existing regulatory mechanisms to conserve it (55 FR 26114; June 26, 1990). Although the rate of loss of habitat due to timber harvest has been greatly reduced on Federal lands over the past two decades, both past and current habitat loss remain a threat to the northern spotted owl. Despite implementation of habitat conservation measures in the early 1990s, Thomas *et al.* (1990, p. 5) and USDI (1992, Appendix C) foresaw that owl populations would continue to decline for several decades, even with habitat conservation, as the consequence of lag effects at both individual and population levels. However, many populations of northern spotted owls have declined at a faster rate than anticipated, especially in the northern parts of the subspecies' range (Anthony *et al.* 2006, pp. 31–32; Forsman *et al.* 2011, pp. 65, 76). We now know that the suite of threats facing the northern spotted owl differs from those at the time it was listed; in addition to the effects of historical and ongoing habitat loss, the northern spotted owl faces a new significant and complex threat in the form of competition from the congeneric (referring to a member of the same genus) barred owl (USFWS 2011, pp. I–7 to I–8).

During the second half of the 20th century, barred owls expanded their range from eastern to western North America, and the range of the barred owl now completely overlaps that of the northern spotted owl (Gutiérrez *et al.* 1995, p. 3; Crozier *et al.* 2006, p. 761). Barred owls compete with northern spotted owls for habitat and resources for breeding, feeding, and sheltering, and the presence of barred owls has significant negative effects on northern spotted owl reproduction, survivorship, and successful occupation of territories (see ''Population Status and Trends,'' below). The loss of habitat has the potential to intensify competition with barred owls by reducing the total amount of resources available to the northern spotted owl and by increasing the likelihood and frequency of competitive interactions. Barred owls select very similar habitat to spotted owls for breeding, feeding, and sheltering, and loss of habitat has the potential to intensify competition between species. While conserving habitat will not alleviate the barred owl threat, Dugger *et al.* (2011, pp. 2464–2465) found that spotted owl occupancy and colonization rates decreased as both barred owl presence increased and available habitat decreased. These authors concluded that, similar to another case in which increased suitable habitat was required to support two potentially competing raptors, increased habitat protection for spotted owls may be necessary to provide for sustainable populations in the presence of barred owls (Dugger *et al.* 2011, p. 2467). Maintaining high-quality habitat has been important since the northern spotted owl was initially listed as threatened in 1990, and this competitive pressure from barred owls has intensified the need to conserve and restore large areas of contiguous, high-quality habitat across the range of the northern spotted owl (Dugger *et al.* 2011, p. 2464; Forsman *et al.* 2011, p. 76; USFWS 2011, Recovery Action 32 [RA32], p. III–67).

It is becoming increasingly evident that solely securing habitat will not be effective in achieving the recovery of the northern spotted owl when barred owls are present (USFWS 2011, p. vi). While conservation of high-quality habitat is essential for the recovery and conservation of the owl, habitat conservation alone is not sufficient to achieve recovery objectives. As stated in the Revised Recovery Plan, ''addressing the threats associated with past and current habitat loss must be conducted simultaneously with addressing the threats from barred owls. Addressing the threat from habitat loss is relatively straightforward with predictable results. However, addressing a large-scale threat of one raptor on another, closely related raptor has many uncertainties'' (USFWS 2011, p. I–8). A designation of critical habitat is intended to ameliorate habitat-based threats to an endangered or threatened species; critical habitat cannot reasonably be expected to address other, non-habitat-related threats to the species. In the case of the northern spotted owl, the recovery goal of supporting population viability and demographically stable populations of northern spotted owls will likely require habitat conservation in concert with the implementation of recovery actions that address other, non-habitat-based threats to the species, including the barred owl. In addition, recovery actions include scientific evaluation of potential management options to reduce the impact of barred owls on northern spotted owls (USFWS 2011, Recovery Action 29 [RA29], p. III–65), and implementation of management actions determined to be effective (USFWS 2011, Recovery Action 30 [RA30], p. III–65).

When developing a critical habitat rule, the Service must use the best scientific information available to identify those specific areas within the geographical area occupied by the species at the time it was listed that provide the physical and biological features essential for the conservation of the species, and that may require special management considerations or protection, or to identify those areas outside the geographical area occupied by the species at the time it was listed that are otherwise determined to be essential to the conservation of the species. However, like most critical habitat proposals, this rule addresses

elements of risk management, because we must make recommendations and decisions in the face of incomplete information and uncertainty about factors influencing northern spotted owl populations. This uncertainty exists even though the northern spotted owl is among the most thoroughly studied of listed species. We understand a great deal about the habitats the subspecies prefers and the factors that influence its demographic trends. Nonetheless, considerable uncertainty remains, particularly about interactions among different factors that threaten the owl.

In the face of such uncertainty, the Revised Recovery Plan proposes strategies to address the primary threats to the northern spotted owl from habitat loss and barred owls (USFWS 2011, p. I–7). The effects of climate change and of past management practices are changing forest ecosystem processes and dynamics, including patterns of wildfires, insect outbreaks and disease, to a degree greater than anticipated in the Northwest Forest Plan (NWFP) (Hessburg *et al.* 2005, pp. 134–135; Carroll *et al.* 2010, p. 899; Spies *et al.* 2010, entire; USFWS 2011, p. I–8). At the same time, the expansion of barred owl populations is altering the capacity of intact habitat to support northern spotted owls. Projecting the effects of these factors and their interactions into the future leads to even higher levels of uncertainty, especially considering how the influences of different threats may vary across the owl's large geographical range. It is clear that ecosystem-level changes are occurring within the northern spotted owl's forest habitat.

The development of a critical habitat network for the northern spotted owl must take into account the current uncertainty associated with both barred owl impacts and climate change predictions (USFWS 2011, p. III–10) as well as the uncertainty associated with how land will be managed in the future, how climate change effects will impact northern spotted owls, and whether and how barred owls will be managed (and thus, what the future effect of barred owls will be on northern spotted owl populations). These uncertainties require that we make some assumptions about likely future conditions in developing, modeling, and evaluating potential critical habitat for the northern spotted owl; those assumptions are identified clearly in this proposed rule (see Criteria Used to Identify Critical Habitat, below) and in our supporting documentation (Dunk *et al.* 2012, entire).

Given the continued decline of northern spotted owl populations, the apparent increase in severity of the threat from barred owls, and information indicating a recent loss of genetic diversity for the subspecies, retaining both occupied northern spotted owl sites and unoccupied, high-value northern spotted owl habitat across the subspecies' range are key components for recovery (USFWS 2011, p. I–9). Accordingly, in this proposed rule, we have identified areas of occupied habitat that provide the physical or biological features essential to the conservation of the northern spotted owl, and which may require special management considerations or protection. When occupied areas were not adequate to achieve recovery goals, we also identified some unoccupied areas as critical habitat for the northern spotted owl when it was clear that such areas are essential to the conservation of the species. However, it is important to note that this proposed revised designation of critical habitat does not include all sites where northern spotted owls are known to occur. The habitat modeling that we used, in part, to assist us in developing this proposed revised designation was based primarily on present habitat suitability. While we did also consider the present known locations of northern spotted owls in refining the identified habitat network, not all such sites were included in the proposed revised designation if those areas did not make a significant contribution to population viability (for example, if known sites were too small or isolated to play a meaningful role in the conservation of the species; see Criteria Used to Identify Critical Habitat). This is in accordance with Section 3(5)(C) of the Act, which specifies that ''critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.''

Because of the uncertainties associated with the effects of barred owl interactions with the northern spotted owl and habitat changes that may occur as a result of climate change, active adaptive management strategies will be needed to achieve results in certain landscapes. Adaptive management is a systematic approach for improving resource management by learning from the results of explicit management policies and practices and applying that learning to future management decisions (USFWS 2011, p. G–1). This critical habitat rule identifies key sources of uncertainty, and the need to learn from our management of forests that provide habitat for northern spotted owls. We propose a critical habitat network that was developed based on what we believe to be essential for the conservation of the northern spotted owl, including information on essential habitats, the current distribution of those habitats, and the best available scientific knowledge about northern spotted owl population dynamics, while acknowledging uncertainty about future conditions in Pacific Northwest forests.

An Ecosystem-Based Approach to the Conservation of the Northern Spotted Owl and Managing Its Critical Habitat

Section 2 of the Act states, ''The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Although the conservation of the listed species is the specific objective of a critical habitat designation, the essential physical or biological features that serve as the basis of critical habitat are often essential components of the ecosystem upon which the species depends. In such cases, a fundamental goal of critical habitat management is not only to conserve the listed species, but also to conserve the ecosystem upon which that species depends. This is the case with the northern spotted owl.

An ''ecosystem'' is defined as a biological community of interacting organisms and their physical environment, or as the complex of a community of organisms and its environment functioning as an ecological unit (Krebs 1972, pp. 10–11; Ricklefs 1979, pp. 31–32, 869). These ecosystem interactions and functions are often referred to as ecological ''relationships'' or ''processes.'' Thus, to conserve the northern spotted owl as directed by the Act, one must also conserve the ecological processes that occur within the ecological landscape inhabited by the species. These processes—such as vegetation succession, forest fire regimes, and nutrient cycling—create and shape the physical and biological features that form the foundation of critical habitat. The northern spotted owl was initially listed as a threatened species largely due to the loss or degradation of the late-successional forest ecosystems upon which it depends. A complex interaction of physical and biological factors contribute to the development and maintenance of these ecosystems, which in turn provide the northern spotted owl with the environmental conditions required for its conservation and survival, such as large areas of suitable habitat, nest structures, and sufficient prey to sustain interconnected populations of owls across the landscape. A fundamental goal of critical habitat management should thus

be to understand, describe, and conserve these processes, which in turn will maintain the physical and biological features essential to the conservation of the species. This ''ecosystem approach'' will ultimately have the highest likelihood of conserving listed species such as the northern spotted owl in the long term (Knight 1998, p. 43).

Service policy also endorses this approach: ''Species will be conserved best not by a species-by-species approach but by an ecosystem conservation strategy that transcends individual species'' (59 FR 34724, July 1, 1994). The Service applies this ecosystem approach to critical habitat designations for other listed species (e.g., in Hawaii (75 FR 18960, April 13, 2010; 76 FR 46362, August 2, 2011)). Likewise, the U.S. Forest Service, which manages the great majority of the proposed northern spotted owl critical habitat, has prioritized restoring and maintaining natural ecological function and resiliency to its forest lands (Blate *et al.* 2009, entire; USDA 2010, entire; Tidwell 2011, entire). Active management of critical habitat is intended to be fully compatible and consistent with these landscape-level ecosystem conservation efforts.

Proposed revised critical habitat for the northern spotted owl includes a diverse forest landscape that covers millions of acres and contains several different forest ecosystems and thousands of plant and animal species. It ranges from dry, fire-prone forests to moist old-growth conifer forest to a mix of conifers and hardwood trees. Thousands of species occur in these forest ecosystems, including other listed species with very specific biological needs. Prescribed management for all of these needs at the species level on large landscapes is likely to be expensive, logistically difficult, and often in conflict (Thompson *et al.* 2009, p. 29). Many scientists believe a single-species approach to forest management is limited and that land managers need to focus on broader landscape goals that address ecosystem process and future habitat conditions (see, e.g., Thomas *et al.* 2006, p. 286; Boyd *et al.* 2008, p. 42; Hobbs *et al.* 2010, p. 487; Mori 2011, pp. 289–290). In this proposed revised designation of critical habitat, we encourage the application of ecosystem management principles to ensure the long-term conservation of the northern spotted owl and its habitat, as well as other species dependent on these shared ecosystems.

Forest Management Activities in Spotted Owl Critical Habitat

Another important development informing spotted owl critical habitat management involves changes in forestry science. Emulating natural disturbance regimes is emerging as a dominant paradigm in North American forest management (Seymour and Hunter 1999, p. 56; Long 2009, p. 1868). This change is occurring in response to: (1) The simplification of forests in terms of structure, age-class diversity, and species composition as a result of management for timber production, and (2) a recognition of fundamental changes in ecosystem function and processes due to land management practices, especially fire and successional patterns (Franklin *et al.* 2002, pp. 402–408; Hessburg *et al.* 2005, pp. 134–135; Drever *et al.* 2006, p. 2291). Although human disturbance is unlikely to precisely mimic natural forest disturbance, it can be used to better maintain the resilience of landscapes and wildlife populations to respond to natural disturbance and climate change (Lindenmayer *et al.* 2008, p. 87). In general, silviculture prescriptions that apply ecological forestry principles to address the conservation of broader ecological processes are compatible with maintaining the proposed critical habitat's essential features in the long term (USFWS 2011, p. III–14).

Explicitly prescribing such management at a fine scale (e.g., forest stand level) is beyond the scope of this document and should be developed at the appropriate land management unit (e.g., National Forest or BLM District; USDA 2010, entire) and through consultation with the Service, as appropriate. As described below and in the Revised Recovery Plan, management actions whose intent is to conserve or restore natural ecological processes and enhance forest resilience in the long term should generally be consistent with the goals of critical habitat management (USFWS 2011, p. III 11–39). The Service has recently approved these types of management actions in occupied spotted owl habitat on BLM and USFS lands.

Some general considerations for managing within spotted owl critical habitat are discussed in more detail in the Special Management Considerations and Adverse Modification sections of this document. In sum, vegetation and fuels management in dry and mixed-dry forests is encouraged both within and outside designated critical habitat where the goal of such treatment is to conserve natural ecological processes or restore them (including fire) where they have been modified or suppressed (Allen *et al.* 2002, pp. 1429–1430; Spies *et al.* 2006, pp. 358–361; Fielder *et al.* 2007, entire; Prather *et al.* 2008, entire; Lindenmayer *et al.* 2009, p. 274; Tidwell 2011, entire). Likewise, in moist and some mixed forests, management of spotted owl critical habitat should be compatible with broader ecological goals, such as the retention of high-quality older forest, the continued treatment of young or homogenous forest plantations, and the conservation or restoration of complex early seral forest habitat (Spies *et al.* 2007b, pp. 57–63; Betts *et al.* 2010, pp. 2117, 2126–2127; Swanson *at al.* 2010, entire). In general, actions that promote ecological restoration and those that apply ecological forestry principles as described in the Revised Recovery Plan (USFWS 2011, pp. III–11 to III–41) are likely to be consistent with the conservation of the northern spotted owl and the management of its critical habitat.

Critical Habitat and the Northwest Forest Plan

It is important for readers of this document to understand the relationship between spotted owl critical habitat and the Northwest Forest Plan (NWFP). Critical habitat for the spotted owl was first designated in 1992 (January 15, 1992; 57 FR 1796). Since 1994, the NWFP has also served as an important landscape-level plan that has contributed to the conservation of the northern spotted owl and its late-successional forest habitat (Thomas *et al.* 2006, pp. 278–284). The NWFP introduced a strategy of reserves where conservation would be the priority, and matrix areas where timber harvest would be the goal. Here we briefly provide a summary of how our proposed designation of critical habitat has been informed by the knowledge and experience gained from management under the NWFP.

The NWFP reserve strategy has been successful in the conservation and recruitment of late-successional forest and associated species on Federal lands (Thomas *et al.* 2006, p. 283). Implementation of the plan has been less successful in providing the anticipated level of commercial timber harvest from matrix lands (less than 50 percent of anticipated levels; Thomas *et al.* 2006, p. 284), at promoting active restoration in areas that may contain uncharacteristically high risk of severe fire (Spies *et al.* 2006, pg. 359; Thomas *et al.* 2006, p. 277), or in moist forests where early seral habitats are lacking

such as those described above (Betts *et al.* 2010, p. 2117).

Some scientists have suggested that it may be time to reconsider various recommendations or requirements of the NWFP in light of improved scientific insight, increasing concerns over future ecological conditions that appear increasingly dynamic, and changing social values (Spies *et al.* 2006, p. 360; Thomas *et al.* 2006, p. 286; Thompson *et al.* 2009, p. 29). Some specifically question the strategy of managing Federal lands in the range of the northern spotted owl separately as reserves in some areas and for commodity production in others, suggesting a more holistic management perspective (Spies *et al.* 2006, p. 360; Thomas *et al.* 2006, p. 286; Franklin and Lindenmayer 2009, entire). Other scientists conclude that a system of large reserves in the NWFP is still necessary for course-scale planning, but that fine-scale management should proceed that restores ecological processes while minimizing adverse impacts to wildlife (Carroll *et al.* 2009, p. 29).

The Service, in developing this proposed critical habitat designation, has taken these concerns into consideration. Thomas *et al.* (2006, pp. 284–287) recommend three primary improvements in the NWFP to address these concerns. These recommendations are highly relevant to spotted owl critical habitat management:

1. Conserve old growth trees and forests on Federal lands *wherever they are found* (emphasis added), and undertake appropriate restoration treatment in the threatened forest types.
2. Manage NWFP forests as dynamic ecosystems that conserve all stages of forest development (e.g., old growth and early seral), and where tradeoffs between short-term and long-term risks are better balanced.
3. Recognize the NWFP as an integrated conservation strategy that contributes to all components of sustainability across Federal lands.

The management of critical habitat for the spotted owl should be compatible with these broader landscape management goals articulated by Thomas *et al.* (2006, pp. 284–287). Critical habitat for the northern spotted owl is not intended to be a ''hands off'' reserve in the traditional sense. Rather, it should be a ''hands-on'' ecosystem management landscape that should include a mix of active and passive actions to meet a variety of conservation goals that support long-term spotted owl conservation. Some general considerations for managing for the conservation of the northern spotted owl are discussed in the Special Management Considerations and Adverse Modification sections of this document, as well as in the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011, pp. III–11 to III–39).

The Biology and Ecology of the Northern Spotted Owl

Physical Description and Taxonomy

The northern spotted owl is a medium-sized owl and the largest of the three subspecies of spotted owls currently recognized by the American Ornithologists' Union (Gutiérrez *et al.* 1995, p. 2). It is dark brown with a barred tail and white spots on the head and breast, and has dark brown eyes that are surrounded by prominent facial disks. The taxonomic separation of these three subspecies is supported by numerous factors (reviewed in Courtney *et al.* 2004, pp. 3–3 to 3–31), including genetic (Barrowclough and Gutiérrez 1990, p. 739; Barrowclough *et al.* 1999, p. 922; Haig *et al.* 2004, p. 1353; Barrowclough *et al.* 2005, p. 1113), morphological (Gutiérrez *et al.* 1995, pp. 2 to 3), behavioral (Van Gelder 2003, p. 30), and biogeographical characteristics (Barrowclough *et al.* 1999, p. 928).

Distribution and Habitat

The current range of the northern spotted owl extends from southwest British Columbia through the Cascade Mountains, coastal ranges, and intervening forested lands in Washington, Oregon, and California, as far south as Marin County, California. The subspecies is listed as threatened under the Act throughout its range (55 FR 26114; June 26, 1990). Within the United States, the northern spotted owl ranges across 12 physiographic provinces, based on recognized landscape subdivisions exhibiting different physical and environmental features, often referred to as ''physiographic provinces'' (Franklin and Dyrness 1988, pp. 5–26; Thomas *et al.* 1990, p. 61; USDA and USDI 1994, p. A–3). These include the Olympic Peninsula, Western Washington Lowlands, Western Washington Cascades, Eastern Washington Cascades, Oregon Coast Ranges, Western Oregon Cascades, Willamette Valley, Eastern Oregon Cascades, Oregon Klamath, California Klamath, California Coast Ranges, and California Cascades Provinces (based on USDA and USDI 1994, p. A–3). Very few northern spotted owls are found in British Columbia, the Western Washington Lowlands or Willamette Valley; therefore, the subspecies is restricted primarily to 10 of the 12 provinces within its range.

For the purposes of developing this proposed rule, and based on Appendix C of the Revised Recovery Plan (USFWS 2011, pp. C–7 to C–13), we have divided the range of the northern spotted owl into 11 different regions. We used these 11 regions in the habitat modeling that informed this proposed revised designation of critical habitat. The regions used here are more ''owl specific'' than the physiographic provinces used in the past. In addition to regional patterns of climate, topography, and forest communities, which the physiographic provinces also considered, the 11 regions are additionally based on specific patterns of spotted owl habitat relationships and prey base relationships across the range of the species. A map of the 11 regions used for the purposes of habitat modeling is provided in the Revised Recovery Plan (USFWS 2011, p. C–13), and are also shown in Figure 1 of this document. We additionally used these 11 regions identified in the Revised Recovery Plan as the organizing units for our designation of critical habitat.

Spotted owls generally rely on older forested habitats because such forests contain the structures and characteristics required for nesting, roosting, and foraging, and dispersal. Forest characteristics associated with spotted owls usually develop with increasing forest age, but their occurrence may vary by location, past forest practices, and stand type, history, and condition. Although spotted owl habitat is variable over its range, some general attributes are common to the owl's life-history requirements throughout its range. To support northern spotted owl reproduction, a home range requires appropriate amounts of nesting, roosting, and foraging habitat arrayed so that nesting pairs can survive, obtain resources, and breed successfully. In northern parts of the range where nesting, roosting, and foraging habitat have similar attributes, nesting is generally associated with increasing old forest in the core area (Swindle *et al.* 1999, p. 1216). In some southern portions of the range, northern spotted owl survival is positively associated with the area of old forest habitat in the core, but reproductive output is positively associated with amount of edge between older forest and other habitat types in the home range (Franklin *et al.* 2000, pp. 573, 579). This pattern suggests that where dusky-footed woodrats (*Neotoma fuscipes*) are the primary prey species, core areas that have nesting habitat stands interspersed with varied types of foraging habitat

may be optimal for northern spotted owl survival and reproduction. Both the amount and spatial distribution of nesting, roosting, foraging, and dispersal habitat influence reproductive success and long-term population viability of northern spotted owls.

Population growth can occur only if there is adequate habitat in an appropriate configuration to allow for the dispersal of owls across the landscape. This includes support of dispersing juveniles, as well as nonresident subadults and adults that have not yet recruited into the breeding population. The survivorship of northern spotted owls is likely greatest when dispersal habitat most closely resembles nesting, roosting, and foraging habitat, but owls may use other types of habitat for dispersal on a short-term basis. Dispersal habitat, at a minimum, consists of stands with adequate tree size and canopy closure to provide protection from avian predators and at least minimal foraging opportunities (57 FR 1805, January 15, 1992).

The three essential functions served by habitat within the home range of a northern spotted owl are:

(1) *Nesting.* Nesting habitat is essential to provide structural features for nesting, protection from adverse weather conditions, and cover to reduce predation risks. Habitat requirements for nesting and roosting are nearly identical. However, nesting habitat is specifically associated with a high incidence of large trees with various deformities (large cavities, broken tops, mistletoe (*Arceuthobium* spp.) infections, and other evidence of decadence) or large snags suitable for nest placement. Additional features that support nesting and roosting typically include a moderate to high canopy closure; a multilayered, multi-species canopy with large overstory trees; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for spotted owls to fly (Thomas *et al.* 1990, p. 164). Forested stands with high canopy closure also provide thermal cover (Weathers *et al.* 2001, p. 686) and protection from predators. Patches of nesting habitat, in combination with roosting habitat, must be sufficiently large and contiguous to maintain northern spotted owl core areas and home ranges, and must be proximate to foraging habitat. Ideally, nesting habitat also functions as roosting, foraging, and dispersal habitat.

(2) *Roosting.* Roosting habitat is essential to provide for thermoregulation, shelter, and cover to reduce predation risk while resting or foraging. As noted above, the same habitat generally serves for both nesting and roosting functions; technically ''roosting habitat'' differs from nesting habitat only in that it need not contain those specific structural features used for nesting (cavities, broken tops, and mistletoe platforms), but does contain moderate to high canopy closure; a multi-layered, multi-species canopy; large accumulations of fallen trees and other woody debris on the ground; and open space below the canopy for northern spotted owls to fly. In practice, however, roosting habitat is not segregated from nesting habitat. Nesting and roosting habitat will also function as foraging and dispersal habitat.

(3) *Foraging.* Foraging habitat is essential to provide a food supply for survival and reproduction. Foraging habitat is the most variable of all habitats used by territorial spotted owls, and is closely tied to the prey base, as described below. Nesting and roosting habitat always provides for foraging, but in some cases owls also use more open and fragmented forests, especially in the southern portion of the range where some younger stands may have high prey abundance and structural attributes similar to those of older forests, such as moderate tree density, subcanopy perches at multiple levels, multi-layered vegetation, or residual older trees. Foraging habitat generally has attributes similar to those of nesting and roosting habitat, but foraging habitat may not always support successfully nesting pairs (USDI 1992, pp. 22–25). Foraging habitat can also function as dispersal habitat. The primary function of foraging habitat is to provide a food supply for survival and reproduction.

Because northern spotted owls show a clear geographical pattern in diet, and different prey species prefer different habitat types, prey distribution contributes to differences in northern spotted owl foraging habitat selection across the range. In the northern portion of their range, northern spotted owls forage heavily in older forests or forests with similar complex structure that support northern flying squirrels (*Glaucomys sabrinus*) Carey *et al.* 1992, p. 233; Rosenberg and Anthony 1992, p. 165). In the southern portion of their range, where woodrats are a major component of their diet, northern spotted owls are more likely to use a variety of stands, including younger stands, brushy openings in older stands, and edges between forest types in response to higher prey density in some of these areas (Solis 1983, pp. 89–90; Sakai and Noon 1993, pp. 376–378; Sakai and Noon 1997, p. 347; Carey *et al.* 1999, p. 73; Franklin *et al.* 2000, p. 579). Both the amount and distribution of foraging habitat within the home range influence the survival and reproduction of northern spotted owls.

Dispersal Habitat and Habitat for Nonresident Owls

Successful dispersal of northern spotted owls is essential to maintaining genetic and demographic connections among populations across the range of the species. Habitats that support movements between larger habitat patches that provide nesting, roosting, and foraging habitats for northern spotted owls act to limit the adverse genetic effects of inbreeding and genetic drift and provide demographic support to declining populations (Thomas *et al.* 1990, pp. 271–272). Dispersing juvenile northern spotted owls experience high mortality rates (more than 70 percent in some studies (Miller 1989, pp. 32–41; Franklin *et al.* 1999, pp. 25, 28; 55 FR 26115; June 26, 1990)) from starvation, predation, and accidents (Miller 1989, pp. 41–44; Forsman *et al.* 2002, pp. 18–19). Juvenile dispersal is thus 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.

Successful juvenile dispersal may depend on locating unoccupied suitable habitat in close proximity to other occupied sites (LaHaye *et al.* 2001, pp. 697–698). Dispersing juveniles are likely attracted to conspecific calls, and may look for suitable sites preferentially in the vicinity of occupied territories. When all suitable territories are occupied, dispersers may temporarily pursue a nonresident (nonbreeding) strategy; such individuals are sometimes referred to as ''floaters'' (Forsman *et al.* 2002, pp. 15, 26). Floaters prospect for territorial vacancies created when residents die or leave their territories. Floaters contribute to stable or increasing populations of northern spotted owls by quickly filling territorial vacancies. Where large blocks of habitat with multiple breeding pairs occur, the opportunities for successful recruitment of dispersers and floaters are enhanced due to the within-block production of potential replacement birds (Thomas *et al.* 1990, pp. 295, 307).

Juvenile dispersal occurs in steps (Forsman *et al.* 2002, pp. 13–14), between which dispersing juveniles settle into temporary home ranges for up to several months (Forsman *et al.* 2002, p. 13). Natal dispersal distances, measured from natal areas to eventual home range, tend to be larger for females (about 15 mi (24 km)) than males (about

8.5 mi (13.7 km)) (Courtney *et al.* 2004, p. 8–5). Forsman *et al.* (2002, pp. 15–16) reported dispersal distances of 1,475 spotted owls in Oregon and Washington for the period from 1985 to 1996. Median maximum dispersal distance (the straight-line distance between the natal site and the farthest location) for radio-marked juvenile male spotted owls was 12.7 mi (20.3 km), and that of female spotted owls was 17.2 mi (27.5 km) (Forsman *et al.* 2002, Table 2).

Spotted owls can utilize forests with the characteristics of nesting, roosting, or foraging for dispersal, and likely experience greater survivorship under such conditions. However, dispersing or nonresident individuals may also make use of other forested areas that do not meet the requirements of nesting or roosting habitat on a short-term basis. Such short-term dispersal habitats must, at minimum, consist of stands with adequate tree size and canopy closure to provide protection from avian predators and at least minimal foraging opportunities.

Population Status and Trends

Demographic data from studies initiated as early as 1985 have been analyzed every 5 years to estimate northern spotted owl demographic rates and population trends (Anderson and Burnham 1992, entire; Burnham *et al.* 1994, entire; Franklin *et al.* 1999, entire; Anthony *et al.* 2006, entire; Forsman *et al.* 2011, entire). The most current evaluation of population status and trends is based on data through 2008 (Forsman *et al.* 2011, p. 1). Based on this analysis, populations on 7 of 11 study areas (Cle Elum, Rainier, Olympic Peninsula, Oregon Coast Ranges, H.J. Andrews, Northwest California, and Green Diamond) were declining (Forsman *et al.* 2011, p. 64, Table 22).

Estimates of realized population change (cumulative population change across all study years) indicated that, in the more rapidly declining populations (Cle Elum, Rainier, and Olympic Peninsula), the 2006 populations were 40 to 60 percent of the population sizes observed in 1994 or 1995 (Forsman *et al.* 2011, pp. 47–49). Populations at the remaining areas (Tyee, Klamath, Southern Oregon Cascades, and Hoopa) showed declining population growth rates as well, although the estimated rates were not significantly different from stable populations (Forsman *et al.* 2011, p 64). A meta-analysis combining data from all 11 study areas indicates that rangewide the population declined at a rate of about 2.9 percent per year for the period from 1985 to 2006. Northern spotted owl populations on Federal lands had better demographic rates than elsewhere, but still declined at a mean annual rate of about 2.8 percent per year for 1985–2006 (Forsman *et al.* 2011, p. 67).

In addition to declines in population growth rates, declines in annual survival were reported for 10 of the 11 study areas (Forsman *et al.* 2011, p. 64, Table 22). Number of young produced each year showed declines at 5 areas (Cle Elum, Klamath, Southern Oregon Cascades, Northwest California, and Green Diamond), was relatively stable at 3 areas (Olympic Peninsula, Tyee, Hoopa), and was increasing at 2 areas (Oregon Coast Ranges, H. J. Andrews) (Forsman *et al.* 2011, p. 64 Table 22).

As noted above, the barred owl has emerged as a greater threat to the northern spotted owl than was previously recognized. The range of the barred owl has expanded in recent years and now completely overlaps that of the northern spotted owl (Crozier *et al.* 2006, p. 761). The presence of barred owls has significant negative effects on northern spotted owl reproduction (Olson *et al.* 2004, p. 1048), survival (Anthony et al 2006, p. 32), and number of territories occupied (Kelly *et al.* 2003, p. 51; Olson *et al.* 2005, p. 928). The determination of population trends for the northern spotted owl has become complicated by the finding that northern spotted owls are less likely to call when barred owls are also present; therefore, they are more likely to be undetected by standard survey methods (Olson *et al.* 2005, pp. 919–929; Crozier *et al.* 2006, pp. 766–767). As a result, it is difficult to determine whether northern spotted owls no longer occupy a site, or whether they may still be present but are not detected. The 2011 Revised Recovery Plan for the Northern Spotted Owl concludes that ''barred owls are contributing to the population decline of spotted owls, especially in Washington, portions of Oregon, and the northern coast of California.'' (USFWS 2011, p. B–12).

British Columbia has a small population of northern spotted owls. This population has declined at least 49 percent since 1992 (Courtney *et al.* 2004, p. 8–14), and by as much as 90 percent since European settlement (Chutter *et al.* 2004, p. 6) to a 2004 breeding population estimated at about 23 birds (Sierra Legal Defence [sic] Fund and Western Canada Wilderness Committee 2005, p. 16) on 15 sites (Chutter *et al.* 2004, p. 26). Chutter *et al.* (2004, p. 30) suggested immediate action was required to improve the likelihood of recovering the spotted owl population in British Columbia. In 2007, the Spotted Owl Population Enhancement Team recommended to remove spotted owls from the wild in British Columbia. Personnel in British Columbia captured and brought into captivity the remaining 16 known wild spotted owls. Prior to initiating the captive-breeding program, the population of spotted owls in Canada was declining by as much as 35 percent per year (Chutter *et al.* 2004, p. 6). The amount of previous interaction between northern spotted owls in Canada and the United States is unknown (Chutter *et al.* 2004, p. 24). Although the status of the spotted owl in Canada is informative in terms of the overall declining trend of the northern spotted owl throughout its range, and consequently the increased need for conservation in those areas where it persists, the Service does not designate critical habitat in foreign countries (50 CFR 424.12(h)).

Life History

Northern spotted owls are a long-lived species with relatively stable and high rates of adult survival, lower rates of juvenile survival, and highly variable reproduction. Franklin *et al.* (2000, p. 576) suggested that northern spotted owls follow a ''bet-hedging'' life-history strategy, where natural selection favors individuals that reproduce only during favorable conditions. For such species, population growth rate is more susceptible to changes in adult survival than to recruitment of new individuals into the population. For northern spotted owls, recent demographic analyses have indicated declining trends in both adult survival and recruitment across much of the species range (Forsman *et al.* 2011, p. 64, Table 22).

Northern spotted owls are highly territorial (Courtney *et al.* 2004, p. 2–7), though overlap between the outer portions of the home ranges of adjacent pairs is common (Forsman *et al.* 1984, pp. 5, 17, 22–24; Solis and Gutiérrez 1990, p. 742; Forsman *et al.* 2005, p. 374). Pairs are nonmigratory and remain on their home range throughout the year, although they often increase the area used for foraging during fall and winter (Forsman *et al.* 1984, p. 21; Sisco 1990, p. 9), likely in response to potential depletion of prey in the core of their home range (Carey *et al.* 1992, p. 245; Carey 1995, p. 649; but see Rosenberg *et al.* 1994, entire). The northern spotted owl shows strong year-round fidelity to its territory, even when not nesting (Solis 1983, pp. 23–28; Forsman *et al.* 1984, pp. 52–53) or after natural disturbance alters habitat characteristics within the home range (Bond *et al.* 2002, pp. 1024–1026). A discussion of northern spotted owl

home range size and use is included in the Primary Constituent Elements section of this proposed rule.

Reproductive success of northern spotted owls has been characterized as a multi-stage process in which natal dispersal and survival to reproductive age are the most vulnerable stages (Carey and Peeler 1995, p. 236). Nomadic adults and juveniles dispersing from their natal area serve as sources of replacements for resident northern spotted owls that die or leave their home range (Thomas *et al.* 1990, p. 295). Habitat supporting movements of northern spotted owls between large habitat blocks is essential for successful dispersal of both juvenile and adult owls (Thomas *et al.* 1990, p. 271). The ability of individuals to move among more isolated populations reduces potentially adverse genetic effects of inbreeding and provides demographic support to declining populations (Thomas *et al.* 1990, pp. 271–272). A discussion of northern spotted owl dispersal is included in the Physical and Biological Features and Primary Constituent Elements sections of this proposed rule.

Prey

Northern spotted owl diets vary across owl territories, years, seasons, and geographical regions (Forsman *et al.* 2001, pp.146–148; 2004, pp. 217–220). However, four to six species of nocturnal mammals typically dominate their diets (Forsman *et al.* 2004, p. 218), with northern flying squirrels being a primary prey species in all areas. In Washington, diets are dominated by northern flying squirrels, snowshoe hare (*Lepus americanus*), bushy-tailed woodrats (*Neotoma cinerea*), and boreal red-backed voles (*Clethrionomys gapperi*) (Forsman *et al.* 2001, p. 144). In Oregon and northern California, northern flying squirrels in combination with dusky-footed woodrats, bushy-tailed woodrats, red tree voles (*Arborimus longicaudus*), and deer mice (*Peromyscus maniculatus*) comprise the majority of diets (Courtney *et al.* 2004, pp. 41–31 to 4–32; Forsman *et al.* 2004, p. 221). Northern spotted owls are also known to prey on insects, other terrestrial mammals, birds, and juveniles of larger mammals (e.g., mountain beaver (*Aplodontia rufa*) (Forsman *et al.* 2001, p. 146; 2004, p. 223).

Northern flying squirrels are positively associated with late-successional forests with high densities of large trees and snags (Holloway and Smith 2011, p. 671). Northern flying squirrels typically use cavities in large snags as den and natal sites, but may also use cavities in live trees, hollow branches of fallen trees, crevices in large stumps, stick nests of other species, and lichen and twig nests they construct (Carey 1995, p. 658). Fungi (mychorrhizal and epigeous types) are prominent in their diet; however, seeds, fruits, nuts, vegetation matter, insects, and lichens may also represent a significant proportion of their diet (summarized in Courtney *et al.* 2004, App. 4 p. 3–12). Northern flying squirrel densities tend to be higher in older forest stands with ericaceous shrubs (e.g., Pacific rhododendron (*Rhododendron macrophyllum*)) and an abundance of large snags (Carey 1995, p. 654), likely because these older forests produce a higher forage biomass. Flying squirrel density tends to increase with stand age (Carey 1995, pp. 653–654; Carey 2000, p. 252), although managed and second-growth stands sometimes also show high densities of squirrels, especially when canopy cover is high (e.g., Rosenberg and Anthony 1992, p. 163; Lehmkuhl *et al.* 2006, pp. 589–591). The main factors that may limit northern flying squirrel densities are the availability of den structures and food, especially hypogeous (below ground) fungi or truffles (Gomez *et al.* 2005, pp. 1677–1678).

For northern spotted owls in Oregon, both dusky-footed and bushy-tailed woodrats are important prey items (Forsman *et al.* 2004, pp. 226–227), whereas in Washington owls rely primarily on the bushy-tailed woodrat (Forsman *et al.* 2001, p. 144). Habitats that support bushy-tailed woodrats usually include early seral mixed-conifer/mixed-evergreen forests close to water (Carey *et al.* 1999, p. 77). Bushy-tailed woodrats reach high densities in both old forests with openings and closed-canopy young forests (Sakai and Noon 1993, pp. 376–378; Carey *et al.* 1999, p. 73), and use hardwood stands in mixed-evergreen forests (Carey *et al.* 1999, p. 73). Bushy-tailed woodrats are important prey species south of the Columbia River and may be more limited by abiotic features, such as the availability of suitable rocky areas for den sites (Smith 1997, p. 4) or the presence of streams (Carey *et al.* 1992, p. 234; 1999, p. 72). Dense woodrat populations in shrubby areas are likely a source of colonists to surrounding forested areas (Sakai and Noon 1997, p. 347), therefore forested areas with nearby open, shrubby vegetation generally support high numbers of woodrats. The main factors that may limit woodrats are access to stable, brushy environments that provide food, cover from predation, materials for nest construction, dispersal ability, and appropriate climatic conditions (Carey *et al.* 1999, p. 78).

Home Range and Habitat Use

Territorial northern spotted owls remain resident on their home range throughout the year; therefore, these homes ranges must provide all the habitat components needed for the survival and successful reproduction of a pair of owls. Northern spotted owls exhibit central-place foraging behavior (Rosenberg and McKelvey 1999, p. 1036), with much activity centered within a core area surrounding the nest tree during the breeding season. During fall and winter as well as in nonbreeding years, owls often roost and forage in areas of their home range more distant from the core. In nearly all studies of northern spotted owl habitat use, the amount of mature and old-growth forest was greater in core areas and home ranges than at random sites on the landscape (Courtney *et al.* 2004, pp. 5–6, 5–13; also see USFWS 2011, Appendix G for definitions of mature and old-growth forest), and forests were less fragmented within spotted owl home ranges (Hunter *et al.* 1995, p. 688). The amount of habitat at the core area scale shows the strongest relationships with home range occupancy (Meyer *et al.* 1998, p. 34; Zabel *et al.* 2003, p. 1036), survival (Franklin *et al.* 2000, p. 567; Dugger *et al.* 2005, p. 873), and reproductive success (Ripple *et al.* 1997, pp. 155–156; Dugger *et al.* 2005, p. 871). A more complete description of the home range is presented in the Physical or Biological Features section of this document, under ''Population Spatial Requirements.''

The size, configuration, and characteristics of vegetation patches within home ranges affect northern spotted owl survival and reproduction, a concept referred to as habitat fitness potential (Franklin *et al.* 2000, p. 542). Among studies that have estimated habitat fitness potential, the effects of forest fragmentation and heterogeneity vary geographically. In the California Klamath Province, locations for nesting and roosting tend to be centered in larger patches of old forest, but edges between forest types may provide increased prey abundance and availability (Franklin *et al.* 2000, p. 579). In the central Oregon Coast Range, northern spotted owls appear to benefit from a mixture of older forests with younger forest and nonforested areas in their home range (Olson *et al.* 2004, pp. 1049–1050), a pattern similar to that found in the California Klamath Province. Courtney *et al.* (2004, p. 5–23) suggest that although in general large

patches of older forest appear to be necessary to maintain stable populations of northern spotted owls, home ranges composed predominantly of old forest may not be optimal for northern spotted owls in the California Klamath Province and Oregon Coast Ranges Province.

The northern spotted owl inhabits most of the major types of coniferous forests across its geographical range, including Sitka spruce (*Picea sitchensis*), western hemlock (*Tsuga heterophylla*), mixed conifer and mixed evergreen, grand fir (*Abies grandis*), Pacific silver fir (*A. amabilis*), Douglas-fir (*Pseudotsuga menziesii*), redwood (*Sequoia sempervirens*)/Douglas-fir (in coastal California and southwestern Oregon), white fir (*A. concolor*), Shasta red fir (*A.magnifica* var. *shastensis*), and the moist end of the ponderosa pine (*Pinus ponderosa*) zone (Forsman *et al.* 1984, pp. 15–16; Thomas *et al.* 1990, p. 145). Habitat for northern spotted owls has traditionally been described as consisting of four functional types: Nesting, roosting, foraging, and dispersal habitats. Recent studies continue to support the practical value of discussing northern spotted owl habitat usage by classifying it into these functional habitat types (Irwin *et al.* 2000, p. 183; Zabel *et al.* 2003, p. 1028; Buchanan 2004, p. 1334; Davis and Lint 2005, p. 21; Forsman *et al.* 2005, p. 372), and data from studies are available to describe areas used for these types of activities, so we retain it here to structure our discussion of the physical or biological features of habitat essential to the conservation of the northern spotted owl.

Recent habitat modeling efforts have also accounted for differences in habitat associations across regions, which have often been attributed to regional differences in forest environments and factors including available prey species (USFWS 2011, p. C–7). These recent advances allowed for modeling of northern spotted owl habitat by regions to account for: (1) The degree of similarity between nesting/roosting and foraging habitats based on prey availability; (2) latitudinal patterns of topology and climate; (3) regional patterns of topography, climate, and forest communities; and (4) geographical distribution of habitat elements that influence the range of conditions occupied by northern spotted owls (USFWS 2011, p. C–8). Detailed characterizations of each of these functional habitat types and their relative distribution are described in the Physical or Biological Features and Primary Constituent Elements section of this document.

Climate Change

There is growing evidence that recent climate change has impacted a wide range of ecological systems (Stenseth *et al.* 2002, entire; Walther *et al.* 2002, entire; Adahl *et al.* 2006, entire; Karl *et al.* 2009, entire). Climate change, combined with effects from past management practices, is exacerbating changes in forest ecosystem processes and dynamics to a greater degree than originally anticipated under the NWFP. Environmental variation affects all wildlife populations; however, climate change presents new challenges as systems may change beyond historical ranges of variability. In some areas, changes in weather and climate may result in major shifts in vegetation communities that can persist in particular regions.

Climate change will present unique challenges to the future of northern spotted owl populations and their habitats. Northern spotted owl distributions (Carroll 2010, entire) and population dynamics (Franklin *et al.* 2000, entire; Glenn *et al.* 2010, entire; 2011a, entire; 2011b, entire) may be directly influenced by changes in temperature and precipitation. In addition, changes in forest composition and structure as well as prey species distributions and abundance resulting from climate change may impact availability of habitat across the historical range of the subspecies. The Revised Recovery Plan provides a detailed discussion of the possible environmental impacts to the habitat of the northern spotted owl from the projected effects of climate change (USFWS 2011, pp. III–5 to III–11).

Because both spotted owl population dynamics and forest conditions are likely to be influenced by large-scale changes in climate in the future, we have attempted to account for these influences in our designation of critical habitat by recognizing that forest composition may change beyond the range of historical variation and that climate changes may have unpredictable consequences for both Pacific Northwest forests and northern spotted owls. This proposed critical habitat designation recognizes that forest management practices that promote ecosystem health under changing climate conditions will be essential for spotted owl conservation.

Previous Federal Actions

The northern spotted owl was listed as a threatened species on June 26, 1990 (55 FR 26114); a description of the relevant previous Federal actions up to the time of listing can be found in that final rule. On January 15, 1992, we published a final rule designating 6,887,000 acres (ac) (2,787,000 hectares (ha)) of Federal lands in Washington, Oregon, and California as critical habitat for the northern spotted owl (57 FR 1796). On January 13, 2003, we entered into a settlement agreement with the American Forest Resources Council, Western Council of Industrial Workers, Swanson Group Inc., and Rough & Ready Lumber Company, to conduct a 5-year status review of the northern spotted owl and consider potential revisions to its critical habitat (*Western Council of Industrial Workers (WCIW)* v. *Secretary of the Interior, Civ. No. 02–6100–AA (D. Or.)*). On April 21, 2003, we published a notice initiating the 5-year review of the northern spotted owl (68 FR 19569), and published a second information request for the 5-year review on July 25, 2003 (68 FR 44093). We completed the 5-year review on November 15, 2004, concluding that the northern spotted owl should remain listed as a threatened species under the Act (USFWS 2004, entire). On November 24, 2010, we published a notice initiating a new 5-year review for the northern spotted owl (75 FR 71726); the information solicitation period for this review was reopened from April 20, 2011 through May 20, 2011 (76 FR 22139), and the completed review was signed on September 29, 2011, concluding that the northern spotted owl was appropriately listed as a threatened species.

In compliance with the settlement agreement, as amended in the WCIW case, we published a proposed revised critical habitat rule in the **Federal Register** on June 12, 2007 (72 FR 32450). On May 21, 2008, we published a notice announcing the availability of a draft economic analysis and the reopening of the public comment period on the proposed revised critical habitat designation (73 FR 29471). This notice also alerted the public of the opportunity to comment on the proposed revision of critical habitat in the context of the recently released Recovery Plan for the Northern Spotted Owl, which was released on May 16, 2008, and announced in the **Federal Register** on May 21, 2008 (73 FR 29471). The 2008 recovery plan formed the basis for the current designation of northern spotted owl critical habitat, which we published in the **Federal Register** on August 13, 2008 (73 FR 47325).

Both the 2008 critical habitat designation and the 2008 recovery plan were challenged in court (*Carpenters' Industrial Council* v. *Salazar,* Case No. 1:08–cv–01409–EGS (D.DC)). In addition, on December 15, 2008, the

Inspector General of the Department of the Interior issued a report entitled ''Investigative Report of The Endangered Species Act and the Conflict between Science and Policy,'' which concluded that the integrity of the agency decision-making process for the spotted owl recovery plan was potentially jeopardized by improper political influence. As a result, the Federal Government filed a motion in the lawsuit for remand of the 2008 recovery plan and the critical habitat designation that was based on it. On September 1, 2010, the Court issued an opinion remanding the 2008 recovery plan to us for issuance of a revised plan within 9 months. On September 15, 2010, we published a **Federal Register** notice (75 FR 56131) announcing the availability of the Draft Revised Recovery Plan for the Northern Spotted Owl, and opened a 60-day comment period through November 15, 2010. On November 12, 2010, we announced by way of press release an extension of the comment period until December 15, 2010.

On November 30, 2010, we announced in the **Federal Register** the reopening of the public comment period until December 15, 2010 (75 FR 74073). At that time we also announced the availability of a synopsis of the population response modeling results for public review and comment. The supporting information regarding the modeling process was posted on our Web site. Of the approximately 11,700 comments received on the Draft Revised Recovery Plan, many requested the opportunity to review and comment on more detailed information on the habitat modeling process in Appendix C. On April 22, 2011, we reopened the comment period on Appendix C of the draft revised recovery plan (76 FR 22720); this comment period closed on May 23, 2011. On May 6, 2011, the Court granted our request for an extension of the due date for issuance of the final revised recovery plan until July 1, 2011. We published the notice of availability of the final Revised Recovery Plan for the Northern Spotted Owl in the **Federal Register** on July 1, 2011 (76 FR 38575).

On October 12, 2010, the Court remanded the 2008 critical habitat designation, which had been based on the 2008 Recovery Plan for the Northern Spotted Owl, and adopted the Service's proposed schedule to issue a new proposed revised critical habitat rule for public comment by November 15, 2011, and a final rule by November 15, 2012. The Court has subsequently extended the date for delivery of the proposed rule to the **Federal Register** to February 28, 2012; the due date of November 15, 2012, for issuance of the final revised rule remains unchanged. This proposed revision of critical habitat for the northern spotted owl is in response to the Court's order.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features;

(a) Essential to the conservation of the species; and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features: (1) Which are essential to the conservation of the species, and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, rainfall, canopy cover, soil type) that are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area that was not occupied at the time of listing but is essential to the conservation of the species may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data

available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and northern spotted owls may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of 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 species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

For the northern spotted owl, the physical or biological features essential to the owl are forested areas that are used or likely to be used by northern spotted owl for nesting, roosting, foraging, or dispersing. The specific characteristics or components that comprise these features include, for example, specific ranges of forest stand density and tree size distribution; coarse woody debris; and specific resources, such as food (prey and suitable prey habitat), nest sites, cover, and other physiological requirements required by northern spotted owls and considered essential for the conservation of the species. We consider these specific primary constituent elements (PCEs) later; here we describe the life-history needs of the owl and the physical and biological features essential to the conservation of the northern spotted owl, which informed our identification of the PCEs. The following information is based on studies of the habitat, ecology, and life history of the species as described in the final listing rule published in the **Federal Register** on June 26, 1990 (55 FR 26114), the Revised Recovery Plan for the Northern Spotted Owl released on June 30, 2011, the Background section of this proposal, and the following information.

Although the northern spotted owl is typically considered a habitat and prey specialist, it uses a relatively broad array of forest types for nesting, roosting, foraging, and dispersal. The diversity of forest types used is a reflection of the large geographical range of this subspecies and strong gradation in annual precipitation and temperature associated with both coastal mountain ranges and the Cascade Range. While the northern spotted owl is unquestionably associated with old-growth forests, habitat selection and population performance involves many additional features (Loehle *et al.* 2011, p. 20). This description of physical and biological features summarizes both variation in habitat use and particular features or portions of the overall gradient of variation that spotted owls preferentially select, and that we, therefore, consider essential to their conservation. We begin by considering the broad-scale patterns of climate, elevation, topography, and forest community type that act to influence spotted owl distributions and space for population growth and dispersal, and then discuss the abundance and pattern of habitats used for nesting, roosting, and foraging at the landscape scale that influence the availability and occupancy of breeding sites and the survival and fecundity of spotted owls. Thus, we begin by considering factors that operate at broader spatial scales and proceed to factors that influence habitat quality at the stand scale. When we discuss the physical or biological features, we focus on features that are common rangewide, but also summarize specific features or patterns of habitat selection that characterize particular regions.

Physical Influences Related to Features Essential to the Northern Spotted Owl

Climate, elevation, and topography are features of the physical environment that influence the capacity of a landscape to support habitat with high value for spotted owls and the type of habitat needed by the species. The distribution and amount of habitat on the landscape reflects interactions among these physical elements. Several studies have found that physical aspects of the environment such as topographic position, aspect, and elevation influence spotted owl habitat selection (e.g., Clark 2007, pp. 97–111; Stalberg *et al.* 2009, p. 80). They also are a factor in determining the type of habitats essential to spotted owl conservation.

Climate

Population processes for spotted owls are affected by both large-scale fluctuations in climate conditions and by local weather variation (Glenn 2009, pp. 246–248). The influence of weather and climate on spotted owl populations has been documented in northern California (Franklin *et al.* 2000, pp. 559–583), Oregon (Olson *et al.* 2004, pp. 1047–1052; Dugger *et al.* 2005, pp. 871–877; Glenn *et al.* 2010, pp. 2546–2551), and Washington (Glenn *et al.* 2010, pp. 2546–2551). Climate and weather effects on spotted owls are mediated by vegetation conditions, and the combination of climate and vegetation

variables improves models designed to predict the distribution of spotted owls (e.g., Carroll 2010, pp. 1434–1437).

Climate niche models for the spotted owl identified winter precipitation as the most important climate variable influencing ability to predict the distribution of spotted owl habitat (Carroll 2010, p. 1434), a finding consistent with previous demographic studies that suggest negative effects of winter and spring precipitation on survival, recruitment, and dispersal (Franklin *et al.* 2000; pp. 559–583). Niche modeling suggested that precipitation variables, both in winter and in summer, were more influential than winter and summer temperatures (Carroll 2010, p. 1434–1436).

Wet, cold weather during the winter or nesting season, particularly the early nesting season, has been shown to negatively affect spotted owl reproduction (Olson *et al.* 2004, p.1039; Dugger *et al.* 2005, p.863; Glenn *et al.* 2011b, p. 1279), survival (Franklin *et al.* 2000, p. 539;, Olson *et al.* 2004, p. 1039; Glenn *et al.* 2011a, p. 159), and recruitment (Franklin *et al.* 2000 p. 559; Glenn *et al.* 2010, p. 2546). Cold, wet weather may reduce reproduction and/or survival during the breeding season due to declines or decreased activity in small mammal populations so that less food is available during reproduction when metabolic demands are high (Glenn *et al.* 2011b, pp. 1290–1294). Wet, cold springs or intense storms during this time may increase the risk of starvation in adult birds (Franklin *et al.* 2000, pp. 559–590). Cold, wet weather may also reduce the male spotted owl's ability to bring food to incubating females or nestlings (Franklin *et al.* 2000, pp. 559–590). Cold, wet nesting seasons have been shown to increase the mortality of nestlings due to chilling (Franklin *et al.* 2000, pp. 559–590) and reduce the number of young fledged per pair per year (Franklin *et al.* 2000, p. 559, Olson *et al.* 2004, p. 1047; Glenn *et al.* 2011b, 1279). Wet, cold weather may decrease survival of dispersing juveniles during their first winter, thereby reducing recruitment (Franklin *et al.* 2000, pp.559–590).

Franklin *et al.* (2000, pp. 582–583) argued that spotted owl populations are regulated or limited by both habitat quality and environmental factors such as weather. Abundance and availability of prey may ultimately limit spotted owl populations, and prey are strongly associated with habitat conditions. As habitat quality decreases, other factors such as weather have a stronger influence on demographic performance. In essence, the presence of high-quality habitat appears to buffer the negative effects of cold, wet springs and winters on survival of spotted owls as well as ameliorate the effects of heat. High-quality spotted owl habitat was defined in a northern California study area as a mature or old growth core within a mosaic of old and younger forest (Franklin *et al.* 2000, p.559). The high-quality habitat can help maintain a stable prey base, thereby reducing the cost of foraging during the early breeding season when energetic needs are high (Carey *et al.* 1992, pp. 223–250; Franklin *et al.* 2000, p. 559). In addition, mature and old forest with high canopy closure typically remains cooler during summer months than younger stands.

Drought or hot temperatures during the previous summer have also been associated with reduced spotted owl recruitment and survival (Glenn *et al.* 2010, p. 2546). Drier, warmer summers and drought conditions during the growing season strongly influence primary production in forests, food availability, and the population sizes of small mammals (Glenn *et al.* 2010, p. 2546). Northern flying squirrels, for example, forage primarily on ectomycorrhizal fungi (truffles), many of which grow better under moist conditions (Lehmkuhl *et al.* 2004, pp. 58–60). Drier, warmer summers, or the high-intensity fires, which such conditions support, may change the range or availability of these fungi, affecting northern flying squirrels and the spotted owls that prey on them. Periods of drought are associated with declines in annual survival rates for other raptors due to a presumed decrease in prey availability (Glenn *et al.* 2010, pp. 2546–2551).

Mexican spotted owls (*S. o. lucida*) and California spotted owls (*S. o. occidentalis*) have a narrow temperature range where body temperature can be maintained without additional metabolic energy expenditure (Ganey *et al.* 1993, pp. 653–654; Weathers *et al.* 2001, pp. 682–686). Others (e.g., Franklin *et al.* 2000, entire) have assumed the northern spotted owl to be similar in this regard. While winter temperatures are relatively mild across much of the northern spotted owl's range, heat stress has been identified as a potential stressor at temperatures exceeding 30 °C (86 °F; Weathers *et al.* 2001, p. 678). The spotted owl's selection for areas with older-forest characteristics has been hypothesized to be related, in part, to its needing cooler areas in summer to avoid heat stress (Barrows and Barrows 1978, entire).

Elevation and Topography

Elevation and corresponding changes in temperature/moisture regimes constrain the development of vegetation communities selected by spotted owls, and may exceed the bounds of physiological tolerance of spotted owls or their prey. Several studies have noted the avoidance or absence of spotted owls above location-specific elevational limits (Blakesley *et al.* 1992, pp. 390–391; Hershey *et al.* 1998, p. 1406; LaHaye and Gutiérrez 1999, pp. 326, 328). In some locations, elevational limits occur despite the presence of forests that appear to have the structural characteristics typically associated with spotted owl habitat. Where forest structure is not the apparent cause of elevational limits, the mechanistic bases of these limits are unknown, but they could be related to prey availability, competitors, or extremes of temperature or precipitation. Habitat for spotted owls can occur from sea level to the lower elevation limit of subalpine vegetation types. This elevation varies with latitude from about 3,000 feet (ft) (900 meters (m)) above sea level in coastal Washington and Oregon (Davis and Lint 2005, p. 32) to about 6,000 ft (1,800 m) above sea level near the southern edge of the range (derived from Davis and Lint 2005, p. 32).

Topography also influences the distribution of spotted owl habitat and patterns of habitat selection. The effects of topography are strongest in drier forests where aspect and insolation (amount of solar radiation received in an area) contribute to moisture stress that can limit forest density and tree growth. In drier forests east of the Cascades and in the Klamath region, suitable habitat can be concentrated at intermediate topographic positions, on north-facing aspects, and in concave landforms that retain moisture. This leads to a distribution of suitable habitat characterized by ribbon-like bands and discrete patches. Ribbons occur along drainages and valley bottoms, along the north faces of ridges that trend from east to west, and at intermediate topographic positions between drier pine-dominated forests at lower elevations and subalpine forest types at higher elevations. Discrete patches occur on top of higher plateaus and in concave landforms. Spotted owl populations inhabiting drier forests have higher fecundity and lower survival rates than owls in other regions (Hicks *et al.* 2003, pp. 61–62; Anthony *et al.* 2006, pp. 28, 30;). The naturally fragmented distribution of suitable habitat in drier forests and increased predation risk associated with traversing this

landscape may be one of many features that contributed to the evolution of these life-history characteristics.

Slope may also influence the distribution of suitable habitat. Intermediate slopes have been associated with spotted owl sites in some studies (e.g., Gremel 2005, p. 37; Gaines *et al.* 2010, pp. 2048–2050; USFWS 2011, Appendix C), but the mechanisms underlying this association are unclear, potentially including a variety of features from soil depth to competition with barred owls.

Biological Influences Related to Features Essential to the Northern Spotted Owl

Forest Community Type (Composition)

Across their geographical range, spotted owl use of habitat spans several scales, with increasing levels of habitat selection specificity at each scale. We refer to these scales as the ''landscape,'' ''home range,'' and ''core area'' scales. Nest stands within core areas are even more narrowly selected (see Functional Categories of Spotted Owl Habitat, in the Background section, above).

Landscapes supporting populations of spotted owls are the broadest scale we will consider, encompassing areas sufficient to support numerous reproductive pairs (roughly 20,000 to 200,000 ac (8,100 to 81,000 ha). Within landscapes, the northern spotted owl inhabits most of the major types of coniferous forests across its geographical range, including Sitka spruce, western hemlock, mixed conifer and mixed evergreen, grand fir, Pacific silver fir, Douglas-fir, redwood/Douglas-fir (in coastal California and southwestern Oregon), white fir, Shasta red fir, and the moist end of the ponderosa pine zone (Forsman *et al.* 1984, pp. 8–9; Franklin and Dyrness 1988, numerous pages; Thomas *et al.* 1990, p. 145). These forest types may be in early-, mid-, or late-seral stages, and must occur in concert with at least one of the physical or biological features characteristic of breeding and nonbreeding (dispersal) habitat, described below.

Landscape-level patterns in tree species composition and topography can influence the distribution and density of spotted owls. These differences in spotted owl distribution occur even when different forest types have similar structural attributes, suggesting that spotted owls may prefer specific plant associations or tree species. Some forest types, such as pine-dominated and subalpine forests, are infrequently used, regardless of their structural attributes. In areas east of the Cascade Crest, spotted owls select forests with high proportions of Douglas-fir trees. The effects of tree species composition on habitat selection also extend to hardwoods within conifer-dominated forests (e.g., Meyer *et al.* 1998, p. 35). For example, our habitat association modeling indicated that habitat value in the central Western Cascades was negatively related to proportion of hardwoods present. At the home range and core area scales, locations occupied by spotted owls consistently have greater amounts of mature and old-growth forest compared to random locations or unused areas. The proportion of older forest within the home range varies greatly by geographical region, but typically falls between 30 and 78 percent (Courtney *et al.* 2004, p. 5–6). The only exception to this pattern occurred in drier forests of Washington, where development of a dense understory of shade-tolerant trees may have reduced suitability of older forests subjected to prolonged fire exclusion (Irwin *et al.* 2004, p. 20). In studies where circles of different sizes were compared, differences between spotted owl sites and random locations diminished as circles of increasing size were evaluated (Courtney *et al.* 2004, p. 5–7), suggesting habitat selection is stricter at the core area scale than at the home range and landscape scales.

Disturbance Regimes

Natural disturbances and anthropogenic (human-caused) activities continuously shape the amount and distribution of spotted owl habitat on the landscape. In moist forests west of the Cascades in Washington and Oregon, and in the Redwood region, anthropogenic activities have a dominant influence on distribution patterns of remaining habitat, with natural disturbances typically playing a secondary role. In contrast, drier forests east of the Cascades and in the Klamath region have dynamic disturbance regimes that continue to exert a strong influence on spotted owl habitat. Climate change may modify disturbance regimes across the range of the spotted owl, resulting in substantial changes to the frequency and extent of habitat disruption by natural events.

In drier forests, low- and mixed-severity fires historically contributed to a high level of spatial and temporal variability in landscape patterns of disturbed and recovering vegetation. However, anthropogenic activities have so altered these historic patterns of vegetation and fuels and associated disturbance regimes that contemporary landscapes no longer function as they did historically (Hessburg *et al.* 2000a, pp. 77–78; Hessburg and Agee 2003, pp. 44–51; Hessburg *et al.* 2005, pp. 122–127, 134–136; Skinner *et al.* 2006, pp. 176–179; Skinner and Taylor 2006, pp. 201–203).

Fire exclusion, combined with the removal of fire-tolerant structures (e.g., large, fire-tolerant tree species such as ponderosa pine, western larch (*Larix occidentalis*), and Douglas-fir), have reduced the resiliency of the landscape to fire and other disturbances, especially in those forest types outside of the wetter, higher severity fire regime types (Agee 1993, pp. 280–319; Hessburg *et al.* 2000a, pp. 71–80; Hessburg and Agee 2003, pp. 44–46). Understory vegetation in these forests has shifted in response to fire exclusion from grasses and shrubs to shade-tolerant conifers, reducing fire tolerance of these forests and increasing drought stress on dominant tree species.

Anthropogenic activities have also fundamentally changed the spatial distribution of fire intolerant-stands among the fire-tolerant stands, changing the pattern of fire activity across the landscape. Past management has homogenized the formerly patchy vegetative network and reduced the complexity that was more prevalent during the pre-settlement era (Skinner 1995, pp. 224–226; Hessburg and Agee 2003, pp. 44–45; Hessburg *et al.* 2007, p. 21; Kennedy and Wimberly 2009, pp. 564–565). Patches of fire-intolerant vegetation that had been spatially separated have become more contiguous and are more prone to conducting fire, insects, and diseases across larger swaths of the landscape (Hessburg *et al.* 2005, pp. 71–74, 77–78). This homogenized landscape may be altering the size and intensity of current disturbances and further altering landscape functionality (e.g., Everett *et al.* 2000, pp. 221–222). This alteration in the disturbance regime further affects forest structure and composition.

The intensity and spatial extent of natural disturbances that affect the amount, distribution, and quality of spotted owl habitat in dry forests are also influenced by local topographic features, elevation, and climate (Swanson *et al.* 1988, entire). At local scales these factors can be used to identify refugia that are insulated from existing disturbance and consequently tend to persist for longer periods (Camp *et al.* 1997, entire). These disturbance refugia are locations where spotted owl habitat has a higher likelihood of developing and persisting in drier forests. As a result of these disturbance regimes, especially in the drier forests within its range, habitat for the northern

spotted owl naturally occurs in a patchy mosaic in various stages of suitability in these regions. 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 in the dry forest regions.

Pattern and Distribution of Habitat

Historically, forest types occupied by the northern spotted owl were fairly continuous, particularly in the wetter parts of its range in coastal northern California and most of western Oregon and Washington. Suitable forest types in the drier parts of the range (interior northern California, interior southern Oregon, and east of the Cascade crest in Oregon and Washington) occur in a mosaic pattern interspersed with infrequently used vegetation types such as open forests, shrubby areas, and grasslands. As described above, natural disturbance processes in these drier regions likely contributed to a pattern in which patches of habitat in various stages of suitability shift positions on the landscape through time. In the Klamath Mountains Provinces of Oregon and California, and to a lesser extent in the Coast and Cascade Provinces of California, large areas of serpentine soils exist that are typically not capable of supporting northern spotted owl habitat (Davis and Lint 2005, pp. 31–33).

Population Spatial Requirements

We have described a range of climatic, elevational, topographic, and compositional factors, and associated disturbance dynamics typical of different regions, that constrain the amount and distribution of spotted owl habitat across landscapes. Within this context, areas that contain the physical and biological features described below must provide habitat in an amount and distribution sufficient to support persistent populations, including metapopulations of reproductive pairs, and opportunities for nonbreeding and dispersing owls to move among populations to be considered essential to the conservation of the northern spotted owl.

Spotted owls are territorial, defending areas that vary across nearly an order of magnitude, from about 1,400 to 14,000 ac (570 to 5,700 ha), depending on latitude and prey resources (see Home Range Requirements, below). Overlap occurs among adjoining territories, but the large size of territories nonetheless means that populations of spotted owls require landscapes with large areas of habitat suitable for nesting, roosting, and foraging. For example, in the northern parts of the subspecies' range where territories are largest, a population of 20 resident pairs would require at least 100,000 ac (about 40,500 ha) when habitat is relatively densely distributed and of high-quality.

As described in the Background section above, several studies have examined patterns of spotted owl habitat selection at the territory scale and the consequences of habitat configuration within a territory on fitness. We do not know if the features that contribute to enhancing spotted owl occupancy and reproductive success at the territory scale can be scaled up to predict what landscape-scale patterns of habitat are most conducive to stable or increasing spotted owl populations. Studies that use populations as units of analysis in order to investigate the effects of the landscape-scale configuration of habitat on the performance of spotted owl populations have only begun. Past models of spotted owl population dynamics have included predictions about the effects of habitat configuration on population performance, but these predictions have not been tested or validated by empirical studies (Franklin and Gutiérrez 2002; p. 215). Recent demographic analyses suggested that recruitment was positively related to the proportion of study areas covered by suitable habitat (see Forsman *et al.* 2011, pp. 59–62), but this covariate was not associated with other aspects of demographic performance, and few other covariates were investigated.

When the spotted owl was listed as threatened in 1990 (55 FR 26114), habitat loss and fragmentation of old-growth forest were identified as major factors contributing to declines in spotted owl populations. As older forests were reduced to smaller and more isolated patches, the ability of spotted owls to successfully disperse and establish territories was likely reduced (Lamberson *et al.* 1992, pp. 506, 508, 510–511). Lamberson *et al.* (1992, pp. 509–511) identified that there appeared to be a sharp threshold in the amount of habitat below which spotted owl population viability plummeted. Lamberson *et al.* (1994, pp. 185–186, 192–194) concluded that size, spacing and shape of reserved areas all had strong influence on population persistence, and reserves that could support a minimum of 20 spotted owl territories were more likely to maintain spotted owl populations than smaller reserves. They also found that juvenile dispersal was facilitated in areas large enough to support at least 20 spotted owl territories. In addition to size, spacing between reserves had a strong influence on successful dispersal (Lamberson *et al.* 1992, pp. 508, 510–511). Forsman *et al.* (2002, pp. 15–16) reported dispersal distances of 1,475 spotted owls in Oregon and Washington for 1985 to 1996. Median maximum dispersal distance (the straight-line distance between the natal site and the farthest location) for radio-marked juvenile male spotted owls was 12.7 miles (mi) (20.3 kilometers (km)), and that of female spotted owls was 17.2 mi. (27.5 km) (Forsman *et al.* 2002: Table 2). Dispersal data and other studies on the amount and configuration of habitat necessary to sustain spotted owls provided the foundation for developing previous spotted owl habitat reserve systems. Given the range-wide declining trends in northern spotted owl populations as well as declining trends in the recruitment of new individuals into territorial populations (Forsman *et al.* 2011, pp. 59–66, Table 22), we have determined that, to be essential, physical and biological features must be positioned on the landscape to enable populations to persist and individual owls to disperse among populations.

In contrast to earlier designations of critical habitat, we did not develop an *a priori* rule set to identify those areas that provide the physical or biological features essential to the conservation of the owl, using factors such as minimum size of habitat blocks, targeted numbers of owl pairs, or maximum distance between blocks of habitat. Instead, we determined the spatial extent and placement of the areas providing the physical or biological features that are essential to the conservation of the owl based on the relative demographic performance of various habitat models tested. This process is summarized in Criteria Used to Identify Critical Habitat, below, and is presented in detail in our supporting documentation (Dunk *et al.* 2012, entire).

Home Range Requirements

Northern spotted owls remain on their home range throughout the year; therefore, their home range must provide all the habitat components and prey needed for the survival and successful reproduction of a territorial pair. The home range of a northern spotted owl is relatively large, but varies in size across the range of the subspecies (Courtney *et al.* 2004, p. 5–24; 55 FR 26117, June 26, 1991). Home range sizes are largest in Washington (Olympic Peninsula: 14,271 ac (5775 ha) (USDI 1992, p. 23; USFWS 1994 in litt., p. 1) and generally decrease along a north-south gradient to approximately 1,430 ac (580 ha) in the Klamath region

of northwestern California and southern Oregon (Zabel *et al.* 1995, p. 436). Northern spotted owl home ranges are generally larger where northern flying squirrels are the predominant prey and smaller where woodrats are the predominant prey (Zabel *et al.* 1995, p. 436). Home range size also increases with increasing forest fragmentation (Carey *et al.* 1992, p. 235; Franklin and Gutiérrez 2002, p. 212; Glenn *et al.* 2004, p. 45) and decreasing proportions of nesting habitat on the landscape (Carey *et al.* 1992, p. 235; Forsman *et al.* 2005, p. 374), suggesting that northern spotted owls increase the size of their home ranges to encompass adequate amounts of suitable forest types (Forsman *et al.* 2005, p. 374).

Meta-analysis of features associated with occupancy at the territory-scale indicated that spotted owls consistently occupy areas having larger patches of older forests (which contained more interior forest) that were more numerous and closer together than random sites (Franklin and Gutiérrez 2002; p. 212). In the Klamath and Redwood regions owls also consistently occupy sites with higher forest heterogeneity than random sites. Occupied sites in the Klamath region, in particular, show a high degree of vegetative heterogeneity, with more variable patch sizes and more perimeter edge than in other regions (Franklin and Gutiérrez 2002; p. 212). In the Klamath region, ecotones, or edges between older forests and other seral stages, may contribute to improved access to prey (Franklin and Gutiérrez 2002, p. 215). Several studies in the Klamath region and the Redwood region have found that variables describing the relationship between habitat core area and edge length improve the ability of models to predict spotted owl occupancy (e.g., Folliard *et al.* 2000, pp. 79–81; Zabel *et al* 2003, pp. 1936–1038). In contrast, spotted owl sites in the Oregon Coast Range had a more even distribution of cover types than random locations, and nest stands had a higher ratio of core to edge and more complex stand shapes than non-nest stands (Courtney *et al.* 2004, p. 5–9).

A home range provides the habitat components essential for the survival and successful reproduction of a resident breeding pair of northern spotted owls. The exact amount, quality, and configuration of these habitat types required for survival and successful reproduction varies according to local conditions and factors such as the degree of habitat fragmentation, proportion of available nesting habitat, and primary prey species (Courtney *et al.* 2004, p. 5–2).

Core Area Requirements

Northern spotted owls often use habitat within their home ranges disproportionally, and exhibit central-place foraging behavior (Rosenberg and McKelvey 1999, p. 1028), with much activity centered within a core area surrounding the nest tree during the breeding season. During fall and winter, as well as in nonbreeding years, owls often roost and forage in areas of their home range more distant from the core. The size of core areas varies considerably across the subspecies' geographical range following a pattern similar to that of home range size (Bingham and Noon 1997, p. 133), varying from over 4,057 ac (1,642 ha) in the northernmost (flying squirrel prey) provinces (Forsman *et al.* 2005, pp. 370, 375) to less than 500 ac (202 ha) in the southernmost (dusky-footed woodrat prey) provinces (Pious 1995, pp. 9–10, Table 2; Zabel *et al.* 2003, pp. 1036–1038). Owls often switch nest trees and use multiple core areas over time, possibly in response to local prey depletion or loss of a particular nest tree.

Core areas contain greater proportions of mature/old forest than random or nonuse areas (Courtney *et al.* 2004, p. 5–13), and the amount of high-quality habitat at the core area scale shows the strongest relationships with occupancy (Meyer *et al.* 1998, p. 34; Zabel *et al.* 2003, pp. 1027, 1036), survival (Franklin *et al.* 2000, p. 567; Dugger *et al.* 2005, p. 873), and reproductive success (Ripple *et al.* 1997, pp. 155 to 156; Dugger *et al.* 2005, p. 871). In some areas, edges between forest types within northern spotted owl home ranges may provide increased prey abundance and availability (Franklin *et al.* 2000, p. 579). For successful reproduction, core areas need to contain one or more forest stands that have both the structural attributes and the location relative to other features in the home range that allow them to fulfill essential nesting, roosting, and foraging functions (Carey and Peeler 1995, pp. 233–236; Rosenberg and McKelvey 1999, pp. 1035–1037).

Areas To Support Dispersal and Nonbreeding Owls

Northern spotted owls regularly disperse through highly fragmented forested landscapes that are typical of the mountain ranges in western Washington and Oregon, and have dispersed from the Coastal Mountains to the Cascades Mountains in the broad forested regions between the Willamette, Umpqua, and Rogue Valleys of Oregon (Forsman *et al.* 2002, p. 22). Corridors of forest through fragmented landscapes serve primarily to support relatively rapid movement through such areas, rather than colonization or residency of nonbreeding owls.

During the transience (movement) phase, dispersers used mature and old-growth forest slightly more than its availability; during the colonization phase, mature and old-growth forest was used at nearly twice its availability (Miller *et al.* 1997, p. 144). Closed pole-sapling-sawtimber habitat was used roughly in proportion to availability in both phases and may represent the minimum condition for movement. Open sapling and clearcuts were used less than expected based on availability during colonization (Miller *et al.* 1997, p. 145). This indicates that transient dispersers can use a greater variety of forested habitats relative to those subadults or nonbreeding adults that are residents; the latter individuals will require habitats that are more similar to the nesting, roosting, and foraging habitats utilized by breeding pairs.

We currently do not have sufficient information to permit formal modeling of dispersal habitat and the influence of dispersal habitat condition on dispersal success (USFWS 2011, p. C–15). We expect that dispersal success is highest when dispersers move through forests that have the characteristics of nesting-roosting and foraging habitats. Spotted owls can also disperse successfully through forests with less complex structure, but risk of starvation and predation likely increase with increasing divergence from the characteristics of suitable (nesting, roosting, foraging) habitat.

Relatively little information is currently available about the features of habitats used by dispersing spotted owls, or the effectiveness of different approaches to managing dispersal habitat. The suitability of habitat to contribute to successful dispersal of spotted owls is likely related to the degree to which it ameliorates heat stress, provides abundant and accessible prey, limits predation risk, and resembles habitat in natal territories (Carey 1985, pp. 105–107; Buchanan 2004, pp. 1335–1341).

Dispersal habitat is habitat that owls use when dispersing. Although no formal studies have been completed to characterize dispersal habitat, a widely-accepted rule of thumb is that while dispersal habitat would optimally be the same as suitable nesting, roosting, or foraging habitat (mature and old-growth stands), if necessary owls can also make use of young stands of trees approximately 11 inches (in) (28 centimeters (cm)) diameter at breast

height (dbh) or greater with roughly a minimum 40 percent canopy closure. Dispersal habitat consists of forest types described above that provide one or both of the habitat components described below that are essential to the dispersal of juvenile and nonterritorial northern spotted owls. Dispersal habitat can occur between larger blocks of nesting, foraging, and roosting habitat or within blocks of nesting, roosting, and foraging habitat. Dispersal habitat is essential to maintaining stable populations by promoting rapid filling of territorial vacancies when resident northern spotted owls die or leave their territories, and to providing adequate gene flow across the range of the species.

Regional Variation in Habitat Use

Differences in patterns of habitat associations across the range of the spotted owl suggest four different broad zones of habitat use, which we characterize as the West Cascades/Coast Ranges of Oregon and Washington, East Cascades, Klamath and Northern California Interior Coast Ranges, and Redwood Coast (Figure 4). We configured these zones based on a qualitative assessment of similarity among ecological conditions and habitat associations within the 11 different regions analyzed, as these four zones efficiently capture the range in variation of some of the physical or biological features essential to the conservation of the northern spotted owl. We summarize the physical or biological features for each of these four zones, emphasizing zone-specific features that are distinctive within the context of general patterns that apply across the entire range of the northern spotted owl.

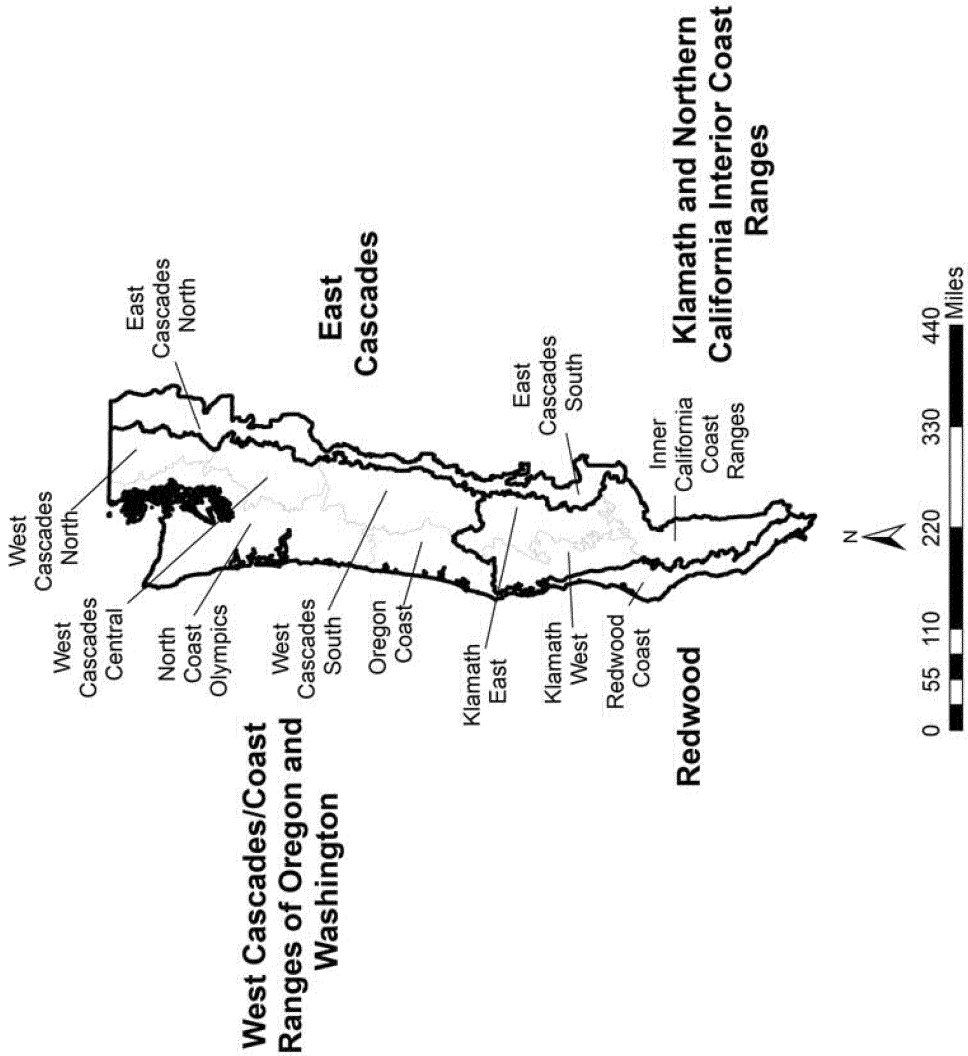


Figure 4. Eleven regions and four zones of habitat associations of northern spotted owls in Washington, Oregon, and California.

West Cascades/Coast Ranges of Oregon and Washington

This zone includes five regions west of the Cascade crest in Washington and Oregon (Western Cascades North, Central and South; North Coast Ranges and Olympic Peninsula; and Oregon Coast Ranges; USFWS 2011, p. C–13). Climate in this zone is characterized by high rainfall and cool to moderate temperatures. Variation in elevation between valley bottoms and ridges is

relatively low in the Coast Ranges, creating conditions favorable for development of contiguous forests. In contrast, the Olympic and Cascade ranges have greater topographic variation, with many high-elevation areas supporting permanent snowfields and glaciers. Douglas-fir and western hemlock dominate forests used by spotted owls. Root diseases and wind-throw are important natural disturbance mechanisms that form gaps in forested areas. Flying squirrels are the dominant prey, with voles and mice also representing important items in the spotted owl's diet.

Our habitat association modeling indicated that vegetation structure had a dominant influence on owl population performance, with habitat pattern and topography also contributing. High canopy cover, high density of large trees, high numbers of sub-canopy vegetation layers, and low to moderate slope positions were all important features.

Nesting habitat in this zone is mostly limited to areas with large trees with defects such as mistletoe brooms, cavities, or broken tops. The subset of foraging habitat that is not nesting/roosting habitat generally had slightly lower values than nesting habitat for canopy cover, tree size and density, and canopy layering. Prey species in this zone are associated with mature to late-successional forests, resulting in small differences between nesting, roosting, and foraging habitat.

East Cascades

This zone includes the Eastern Cascades North and Eastern Cascades South regions (USFWS 2011, p. C–13). This zone is characterized by a continental climate (cold, snowy winters and dry summers) and a high frequency of natural disturbances due to fires and outbreaks of forest insects and pathogens. Flying squirrels are the dominant prey species, but the diet of spotted owls also includes relatively large proportions of bushy-tailed woodrats, snowshoe hare, pika, and mice (Forsman *et al.* 2001, pp. 144–145).

Our modeling indicates that habitat associations in this zone do not show a pattern of dominant influence by one or a few variables (USFWS 2011, Appendix C). Instead, habitat association models for this zone included a large number of variables, each making a relatively modest contribution (20 percent or less) to the predictive ability of the model. The features that were most useful in predicting habitat quality were vegetation structure and composition, and topography, especially slope position in the north. Other efforts to model habitat associations in this zone have yielded similar results (e.g., Gaines *et al.* 2010, pp. 2048–2050; Loehle *et al.* 2011, pp. 25–28).

Relative to other portions of the subspecies' range, nesting and roosting habitat in this zone includes relatively younger and smaller trees, likely reflecting the common usage of dwarf mistletoe brooms (dense growths) as nesting platforms (especially in the north). Forest composition that includes high proportions of Douglas-fir is also associated with this nesting structure. Additional foraging habitat in this zone generally resembles nesting and roosting habitat, with reduced canopy cover and tree size, and reduced canopy layering. High prey diversity suggests relatively diverse foraging habitats are used. Topographic position was an important variable, particularly in the north, possibly reflecting competition from barred owls (Singleton *et al.* 2010, pp. 289, 292). Barred owls, which have been present for over 30 years in northern portions of this zone, preferentially occupy valley-bottom habitats, possibly compelling spotted owls to establish territories on less productive, mid-slope locations (Singleton *et al.* 2010, pp. 289, 292).

Klamath and Northern California Interior Coast Ranges

This zone includes the Klamath-Siskiyou West, Klamath-Siskiyou East, and Interior California Coast regions (USFWS 2011, p. C–13). This region in southwestern Oregon and northwestern California is characterized by very high climatic and vegetative diversity resulting from steep gradients of elevation, dissected topography, and large differences in moisture from west to east. Summer temperatures are high, and spotted owls occur at elevations up to 1,768 m (5,800 ft). Western portions of this zone support a diverse mix of mesic forest communities interspersed with drier forest types. Forests of mixed conifers and evergreen hardwoods are typical of the zone. Eastern portions of this zone have a Mediterranean climate with increased occurrence of ponderosa pine. Douglas-fir dwarf mistletoe (*Arceuthobium douglasii*) is rarely used for nesting platforms in the west, but commonly used in the east. The prey base for spotted owls in this zone is correspondingly diverse, but dominated by dusky-footed woodrats, bushy-tailed woodrats, and flying squirrels. Spotted owls have been well studied in the Klamath portion of this zone, but relatively little is known about spotted owl habitat use in the California Interior Coast Range portion of the zone. Our habitat association models for this zone suggest that vegetation structure and topographic features are nearly equally important in influencing owl population performance, particularly in the Klamath. High canopy cover, high levels of canopy layering, and the presence of very large dominant trees were all important features of nesting and roosting habitat. Compared to other zones, additional foraging habitat for this zone showed greater divergence from nesting habitat, with much lower canopy cover and tree size. Low to intermediate slope positions were strongly favored. In the eastern Klamath, presence of Douglas-fir was an important compositional variable in our habitat model (USFWS 2011, Appendix C).

Redwood Coast

This zone is confined to the northern California coast, and is represented by the Redwood Coast region (USFWS 2011, p. C–13). It is characterized by a maritime climate with moderate temperatures and generally mesic conditions. Near the coast, frequent fog delivers consistent moisture during the summer. Terrain is typically low-lying (0 to 900 m (0 to 3,000 ft)). Forest communities are dominated by redwood, Douglas-fir—tanoak (*Lithocarpus densiflorus*) forest, coast live oak (*Quercus agrifolia*), and tanoak series. Dusky footed woodrats are dominant prey items in this zone.

Habitat association models for this zone diverged strongly from models for other zones. Topographic variables (slope position and curvature) had a dominant influence with vegetation structure having a secondary role. Low position on slopes was strongly favored, along with concave landforms.

Several studies of spotted owl habitat relationships suggest that stump-sprouting and rapid growth of redwood trees, combined with high availability of woodrats in patchy, intensively managed forests, enables spotted owls to occupy a wide range of vegetation conditions within the redwood zone. Rapid growth rates enable young stands to develop structural characteristics typical of older stands in other regions. Relatively small patches of large remnant trees can also provide nesting habitat structure in this zone.

Physical or Biological Features and Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the spotted owl in areas occupied at the

time of listing, focusing on the features' primary constituent elements (PCEs). The physical or biological features essential to the conservation of the northern spotted owl are forested lands that are used or likely to be used for nesting, roosting, foraging, or dispersing. We have further determined that these physical or biological features may require special management considerations or protection, as described in the section Special Management Considerations or Protection, below. We consider the PCEs to be the specific elements that comprise the physical or biological features that are essential to the conservation of the species. For the northern spotted owl, the primary constituent elements are the specific characteristics that make areas suitable for nesting, roosting, foraging and dispersal habitat. To be essential to the conservation of the northern spotted owl, these features need to be distributed in a spatial configuration that is conducive to persistence of spotted owl populations, survival and reproductive success of resident pairs, and survival of dispersing individuals until they can recruit into a breeding population.

Physical or Biological Features by Life-History Function

Each of the essential features—in this case, forested lands that provide the functional categories of northern spotted owl habitat—comprises a complex interplay of structural elements, such as tree size and species, stand density, canopy diversity, and decadence. Spotted owls have been shown to exhibit strong associations with specific PCEs; however, the range of combinations of PCEs that may constitute habitat (particularly foraging habitat) is broad. In addition, the relative importance of specific habitat elements (and subsequently their relevance as PCEs) is strongly influenced by physical factors such as elevation and slope position, and the degree to which physical factors influence the role of individual PCEs varies geographically. In addition to forest type, the key elements of habitats with the physical or biological features essential for the conservation of the northern spotted owl may be organized as follows:

Nesting and Roosting Habitat

Nesting and roosting habitat provides structural features for nesting, protection from adverse weather conditions, and cover to reduce predation risks for adults and young. Because nesting habitat provides resources critical for nest site selection and breeding, its characteristics tend to be conservative; stand structures at nest sites tend to vary little across the spotted owl's range. Nesting stands typically include a moderate to high canopy closure (60 to over 80 percent); a multilayered, multispecies canopy with large (greater than 30 in (76 cm) dbh) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for northern spotted owls to fly (Thomas *et al.* 1990, p. 164; 57 FR 1798, January 15, 1992). These findings were recently reinforced in rangewide models developed by Davis and Dugger (2011, Table 3–1, p. 39), who found that stands used for nesting (moderate to high suitability) exhibited high canopy cover of conifers (65 to 89 percent), large trees (mean diameter from 20 to 36 in (51 to 91 cm)), with a forest density of 6 to 19 large trees (greater than 30 in dbh) per acre (15 to 47 large trees (greater than 76 cm dbh) per hectare), and high diameter diversity.

Recent studies have found that northern spotted owl nest stands tend to have greater tree basal area, number of canopy layers, density of broken-top trees, number or basal area of snags, and volume of logs (Courtney *et al.* 2004, pp. 5–16 to 5–19, 5–23) than non-nest stands. In some forest types, northern spotted owls nest in younger forest stands that contain structural characteristics of older forests (legacy features from previous stands before disturbance). In the portions of the spotted owl's range where Douglas-fir dwarf mistletoe occurs, infected trees provide an important source of nesting platforms (Buchanan *et al.* 1993, pp. 4–5). Nesting northern spotted owls consistently occupy stands having a high degree of canopy cover that may provide thermoregulatory benefits (Weathers *et al.* 2001, p. 686), allowing northern spotted owls a wider range of choices for locating thermally neutral roosts near the nest site. A high degree of canopy closure may also conceal northern spotted owls, reducing potential predation. Studies of roosting locations found that northern spotted owls tended to use stands with greater vertical canopy layering (Mills *et al.*1993, pp. 318–319), canopy closure (King 1993, p. 45), snag diameter (Mills *et al.* 1993, pp. 318–319), diameter of large trees (Herter *et al.* 2002, pp. 437, 441), and amounts of large woody debris (Chow 2001, p. 24; reviewed in Courtney *et al.* 2004, pp. 5–14 to 5–16, 5–23). Northern spotted owls use the same habitat for both nesting and roosting; the characteristics of roosting habitat differ from those of nesting habitat only in that roosting habitat need not contain the specific structural features used for nesting (Thomas *et al.*1990, p. 62). Aside from the presence of the nest structure, nesting and roosting habitat are generally inseparable.

Habitat modeling developed for the Revised Recovery Plan (USFWS 2011, Appendix C) and used as one means of helping us identify potential critical habitat for the northern spotted owl supports previous descriptions of nesting habitat (57 FR 1796, January 15, 1992; 73 FR 47326, August 13, 2008), and suggests a high degree of similarity among the 11 ecological regions across the range of the species. Across regions, moderate to high suitability nesting habitat was characterized as having high canopy cover (65 to over 80 percent) and high basal area (240 ft^2/ac; (55 m^2/ha), mean dbh of conifers at least 16.5 to 24 in (42 to 60 cm), and a significant component of larger trees (greater than 30 in (75 cm)).

Foraging Habitat

Habitats used for foraging by northern spotted owls vary widely across the spotted owl's range, in accordance with ecological conditions and disturbance regimes that influence vegetation structure and prey species distributions. In general, spotted owls select old forests for foraging in greater proportion than its availability at the landscape scale (Carey *et al.* 1992, pp. 236 to 237; Carey and Peeler 1995, p. 235; Forsman *et al.* 2005, pp. 372–373), but will forage in younger stands and brushy openings with high prey densities and access to prey (Carey *et al.* 1992, p. 247; Rosenberg and Anthony 1992, p. 165; Thome *et al.* 1999, pp. 56–57). Throughout much of the owl's range, the same habitat that provides for nesting and roosting also provides for foraging, although northern spotted owls have greater flexibility in utilizing a variety of habitats for foraging than they do for nesting and roosting. That is, habitats that meet the species' needs for nesting and roosting generally also provide for foraging (and dispersal) requirements of the owl. However, in some areas owls may use other types of habitats for foraging in addition to those used for nesting and roosting, thus habitat that supports foraging (or dispersal) does not always support the other PCEs and does not necessarily provide for nesting or roosting.

Variation in the potential use of various foraging habitats throughout the range of the northern spotted owl is described here.

West Cascades/Coast Ranges of Oregon and Washington

In the West Cascades/Coast Ranges of Oregon and Washington, high-quality foraging habitat is also nesting/roosting habitat. Foraging activity is positively associated with tree height diversity (North *et al.* 1999, p. 524), canopy closure (Irwin *et al.* 2000, p. 180; Courtney *et al.* 2004, p. 5–15), snag volume, density of snags greater than 20 in (50 cm) dbh (North *et al.* 1999, p. 524; Irwin *et al.* 2000, pp. 179–180; Courtney *et al.* 2004, p. 5–15), density of trees greater than or equal to 31 in (80 cm) dbh (North *et al.* 1999, p. 524) density of trees 20 to 31 in (51 to 80 cm) dbh (Irwin *et al.* 2000, pp. 179–180), and volume of woody debris (Irwin *et al.* 2000, pp. 179–180).

While the majority of studies reported strong associations with old-forest characteristics, younger forests with some structural characteristics (legacy features) of old forests (Carey *et al.* 1992, pp. 245 to 247; Irwin *et al.* 2000, pp. 178 to 179), hardwood forest patches and edges between old forest and hardwoods (Glenn *et al.* 2004, pp. 47–48) are also used by foraging spotted owls.

East Cascades

Foraging habitats used by spotted owls in the East Cascades of Oregon, Washington and California were similar to those used in the Western Cascades, but can also encompass forest stands that exhibit somewhat lower mean tree sizes (quadratic mean diameter 16–22 in (40–55 cm) (Irwin *et al.* 2012, p. 207). However, foraging activity was still positively associated with densities of large trees (greater than 26 in (66 cm)) and increasing basal area (Irwin *et al.* 2012, p. 206). Stands composed of Douglas-fir and white fir/Douglas-fir mix were preferred in some regions, whereas stands dominated by ponderosa pine were avoided (Irwin *et al.* 2012, p. 207).

Klamath and Northern California Interior Coast Ranges

Because diets of northern spotted owls in the Klamath and Northern California Interior Coast Ranges consist predominantly of both northern flying squirrels and dusky-footed woodrats, habitats used for foraging spotted owls are much more variable than in northern portions of the species' range. As in other regions, foraging spotted owls select stands with mature and old-forest characteristics such as increasing mean stand diameter and densities of trees greater than 26 in (66 cm) (Irwin *et al.* 2012, p. 206) and mean stand diameter greater than 21 in (52.5 cm) (Solis and Gutierrez 1990, p. 747), high canopy cover (87 percent at frequently used sites; Solis and Gutierrez 1990, p. 74, Table 3), and multiple canopy layers (Solis and Gutierrez 1990, p. 74; Anthony and Wagner 1999, pp. 14, 17). However, other habitat elements are disproportionately used, particularly forest patches within riparian zones of low-order streams (Solis and Gutierrez 1990, p. 747; Irwin *et al.* 2012, p. 208) and edges between conifer and hardwood forest stands (Zabel *et al* 1995, pp. 436–437; Ward *et al.* 1998, pp. 86, 88–89). Foraging use is positively influenced by conifer species, including incense-cedar (*Calocedrus decurrens*), sugar pine (*P. lambertiana*), Douglas-fir, and hardwoods such as bigleaf maple (*Acer macrophyllum*), California black oak (*Q. kelloggii*), live oaks, and Pacific madrone (*Arbutus menziesii*) as well as shrubs (Sisco 1990, p. 20; Irwin *et al.* 2012, pp. 206–207, 209–210), presumably because they produce mast important for prey species. Within a mosaic of mature and older forest habitat, brushy openings and dense young stands or low-density forest patches also receive some use (Sisco 1990, pp. 9, 12, 14, 16; Zabel *et al.* 1993, p. 19; Irwin *et al.* 2012, pp. 209–210).

Redwood Coast

The preponderance of information regarding habitats used for foraging by spotted owls in the Redwood Coast zone comes from intensively managed industrial forests. In these environments, which comprise the majority of the redwood region, interspersion of foraging habitat and prey-producing habitat appears to be an important element of habitat suitability. Foraging habitat is used by owls to access prey and is characterized by a wide range of tree sizes and ages. Foraging activity by owls is positively associated with density of small to medium sized trees (10 to 22 in (25 to 56 cm)) and trees greater than 26 in (66 cm) in diameter (Irwin *et al.* 2007b, p. 19) or greater than 41 years of age (MacDonald *et al.* 2006, p. 381). Foraging was also positively associated with hardwood species, particularly tanoak (MacDonald *et al.* 2006, pp. 380–382; Irwin *et al.* 2007a, pp. 1188–1189). Prey-producing habitats occur within early-seral habitats 6 to 20 years old (Hamm and Diller 2009, p. 100, Table 2), typically resulting from clearcuts or other intensive harvest methods. Habitat elements within these openings include dense shrub and hardwood cover, and woody debris.

Models developed for the Revised Recovery Plan (USFWS 2011, Appendix C) to assess habitat suitability for the northern spotted owl across the range of the species and applied here to help identify potential critical habitat were based on habitat conditions within 500-acre (200-ha) core areas. Because core areas support a mix of nesting, roosting, and foraging habitats, their characteristics provide a basis for identification and quantification of PCEs.

Nonbreeding and Dispersal Habitat

Although the term ''dispersal'' frequently refers to post fledgling movements of juveniles, for the purposes of this rule we are using the term to include all movement during both the transience and colonization phase, and to encompass important concepts of linkage and connectivity among owl subpopulations. Population growth can only occur if there is adequate habitat in an appropriate configuration to allow for the dispersal of owls across the landscape. Although habitat that allows for dispersal may currently be marginal or unsuitable for nesting, roosting, or foraging, it provides an important linkage function among blocks of nesting habitat both locally and over the owl's range that is essential to its conservation. However, as noted above, we expect dispersal success is highest when dispersers move through forests that have the characteristics of nesting-roosting and foraging habitats. Although spotted owls may be able to move through forests with less complex structure, survivorship is likely decreased. Dispersal habitat, at a minimum, consists of stands with adequate tree size and canopy closure to provide protection from avian predators and at least minimal foraging opportunities; there may be variations over the owl's range (e.g., drier site in the east Cascades or northern California). This may include younger and less diverse forest stands than foraging habitat, such as even-aged, pole-sized stands, but such stands should contain some roosting structures and foraging habitat to allow for temporary resting and feeding during the transience phase.

Habitat supporting nonbreeding spotted owls or the colonization phase of dispersal is generally equivalent to nesting, roosting, and foraging habitat and is described above, although it may be in smaller amounts than that needed to support nesting pairs.

Primary Constituent Elements for the Northern Spotted Owl

Based on our current knowledge of the life history, biology, and ecology of the northern spotted owl and the requirements of the habitat to sustain its essential life-history functions, as described above, we have determined that the PCEs for the northern spotted owl are:

(1) Forest types that may be in early-, mid-, or late-seral stages and that support the northern spotted owl across its geographical range; these forest types are primarily:

(a) Sitka spruce,

(b) Western hemlock,

(c) Mixed conifer and mixed evergreen,

(d) Grand fir,

(e) Pacific silver fir,

(f) Douglas-fir,

(g) White fir,

(h) Shasta red fir,

(i) Redwood/Douglas-fir (in coastal California and southwestern Oregon), and

(j) The moist end of the ponderosa pine coniferous forests zones at elevations up to approximately 3,000 ft (900 m) near the northern edge of the range and up to approximately 6,000 ft (1,800 m) at the southern edge.

(2) Habitat that provides for nesting and roosting. In many cases the same habitat also provides for foraging (PCE (3)). Nesting and roosting habitat provides structural features for nesting, protection from adverse weather conditions, and cover to reduce predation risks for adults and young. This PCE is found throughout the geographical range of the northern spotted owl, because stand structures at nest sites tend to vary little across the spotted owl's range. These habitats must provide:

(a) Sufficient foraging habitat to meet the home range needs of territorial pairs of northern spotted owls throughout the year.

(b) Stands for nesting and roosting that are generally characterized by:

(i) Moderate to high canopy closure (60 to over 80 percent),

(ii) Multilayered, multispecies canopies with large (20–30 in (51–76 cm) or greater dbh) overstory trees,

(iii) High basal area (greater than 240 ft^2/acre (55 m^2/ha)),

(iv) High diversity of different diameters of trees,

(v) High incidence of large live trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence),

(vi) Large snags and large accumulations of fallen trees and other woody debris on the ground, and

(vii) Sufficient open space below the canopy for northern spotted owls to fly.

(3) Habitat that provides for foraging, which varies widely across the northern spotted owl's range, in accordance with ecological conditions and disturbance regimes that influence vegetation structure and prey species distributions. Across most of the owl's range, nesting and roosting habitat is also foraging habitat, but in some regions northern spotted owls may additionally use other habitat types for foraging as well. The specific foraging habitat PCEs for the four ecological zones within the geographical range of the northern spotted owl are the following:

(a) West Cascades/Coast Ranges of Oregon and Washington

(i) Stands of nesting and roosting habitat; additionally, owls may use younger forests with some structural characteristics (legacy features) of old forests, hardwood forest patches, and edges between old forest and hardwoods;

(ii) Moderate to high canopy closure (60 to over 80 percent);

(iii) A diversity of tree diameters and heights;

(iv) Increasing density of trees greater than or equal to 31 in (80 cm) dbh increases foraging habitat quality (especially above 12 trees per ac (30 trees per ha));

(v) Increasing density of trees 20 to 31 in (51 to 80 cm) dbh increases foraging habitat quality (especially above 24 trees per ac (60 trees per ha));

(vi) Increasing snag basal area, snag volume (the product of snag diameter, height, estimated top diameter, and including a taper function (North *et al.* 1999, p. 523)), and density of snags greater than 20 in (50 cm) dbh all contribute to increasing foraging habitat quality, especially above 4 snags per ac (10 snags per ha);

(vii) Large accumulations of fallen trees and other woody debris on the ground; and

(viii) Sufficient open space below the canopy for northern spotted owls to fly.

(b) East Cascades

(i) Stands of nesting and roosting habitat;

(ii) Stands composed of Douglas-fir and white fir/Douglas-fir mix;

(iii) Mean tree size greater than 16.5 in (42 cm) quadratic mean diameter;

(iv) Increasing density of large trees (greater than 26 in (66 cm)) and increasing basal area (the total area covered by trees measured at breast height) increases foraging habitat quality;

(v) Large accumulations of fallen trees and other woody debris on the ground; and

(vi) Sufficient open space below the canopy for northern spotted owls to fly.

(c) Klamath and Northern California Interior Coast Ranges

(i) Stands of nesting and roosting habitat; in addition, other forest types with mature and old-forest characteristics;

(ii) Presence of the conifer species, incense-cedar, sugar pine, Douglas-fir, and hardwood species such as bigleaf maple, black oak, live oaks, and madrone, as well as shrubs;

(iii) Forest patches within riparian zones of low-order streams and edges between conifer and hardwood forest stands;

(iv) Brushy openings and dense young stands or low-density forest patches within a mosaic of mature and older forest habitat;

(v) High canopy cover (87 percent at frequently used sites);

(vi) Multiple canopy layers;

(vii) Mean stand diameter greater than 21 in (52.5 cm);

(viii) Increasing mean stand diameter and densities of trees greater than 26 in (66 cm) increases foraging habitat quality;

(ix) Large accumulations of fallen trees and other woody debris on the ground; and

(x) Sufficient open space below the canopy for northern spotted owls to fly.

(d) Redwood Coast

(i) Nesting and roosting habitat; in addition, stands composed of hardwood tree species, particularly tanoak;

(ii) Early-seral habitats 6 to 20 years old with dense shrub and hardwood cover and abundant woody debris; these habitats produce prey, and must occur in conjunction with nesting, roosting, or foraging habitat;

(iii) Increasing density of small-to-medium sized trees (10 to 22 in (25 to 56 cm)) increases foraging habitat quality;

(iv) Trees greater than 26 in (66 cm) in diameter or greater than 41 years of age; and

(v) Sufficient open space below the canopy for northern spotted owls to fly.

(4) Habitat to support the transience and colonization phases of dispersal, which in all cases would optimally be composed of nesting, roosting, or foraging habitat (PCEs (2) or (3)), but which may also be composed of other forest types that occur between larger blocks of nesting, roosting, and foraging

habitat. In cases where nesting, roosting, or foraging habitats are insufficient to provide for dispersing or nonbreeding owls, the specific dispersal habitat PCEs for the northern spotted owl may be provided by the following:

(a) Habitat supporting the transience phase of dispersal, which includes:

(i) Stands with adequate tree size and canopy closure to provide protection from avian predators and minimal foraging opportunities; in general this may include, but is not limited to, trees with at least 11 in (28 cm) dbh and a minimum 40 percent canopy closure; and

(ii) Younger and less diverse forest stands than foraging habitat, such as even-aged, pole-sized stands, if such stands contain some roosting structures and foraging habitat to allow for temporary resting and feeding during the transience phase.

(b) Habitat supporting the colonization phase of dispersal, which is generally equivalent to nesting, roosting, and foraging habitat as described in PCEs (2) and (3), but may be smaller in area than that needed to support nesting pairs.

This proposed revised designation describes the physical or biological features and their primary constituent elements essential to support the life-history functions of the northern spotted owl. We have determined that all of the units and subunits proposed for designation were most likely occupied by the northern spotted owl at the time of listing, with the exception of one subunit, and that, depending on the scale at which occupancy is considered, some smaller areas within the subunits may have been unoccupied at the time of listing. In such cases, we have evaluated those areas and determined that they are essential to the conservation of the species, as described in Criteria Used to Identify Critical Habitat. The Criteria section also describes our evaluation of the amount and configuration of the physical or biological features on the landscape to determine where those features are essential to the conservation of the spotted owl. We have further determined that the physical or biological features essential to the conservation of the northern spotted owl require special management considerations or protection, as described below.

In areas occupied at the time of listing, not all of the proposed revised critical habitat will contain all of the PCEs, because not all life-history functions require all of the PCEs. Some subunits contain all PCEs and support multiple life processes, while some subunits may contain only those PCEs necessary to support the species' particular use of that habitat. However, all of the areas proposed for designation support at least the first PCE described (forest-type), in conjunction with at least one other PCE. Thus PCE (1) must always occur in concert with at least one additional PCE (PCE 2, 3, or 4).

Special Management Considerations or Protection

The term critical habitat is defined in section 3(5)(A) of the Act, in part, as geographical areas on which are found those physical or biological features essential to the conservation of the species and ''which may require special management considerations or protection.'' Accordingly, in identifying critical habitat in areas occupied at the time of listing, we determine whether the features essential to the conservation of the species on those areas may require any special management actions or protection. Here we present a discussion of the special management considerations or protections that may be required throughout the proposed critical habitat for the northern spotted owl.

An effective critical habitat strategy needs to conserve extant, high-quality northern spotted owl habitat in order to reverse declining population trends and address the threat from barred owls. The northern spotted owl was initially listed as a threatened species due largely to both historical and ongoing habitat loss and degradation. The recovery of the northern spotted owl therefore requires both protection of habitat and management where necessary to provide sufficient high-quality habitat to allow for population growth and to provide a buffer against threats such as competition with the barred owl. Recovery Criterion 3 in the Revised Recovery Plan for the Northern Spotted Owl is the ''Continued Maintenance and Recruitment of Spotted Owl Habitat,'' which is further described as the achievement of a stable or increasing trend in spotted owl nesting, roosting, and foraging habitat throughout the range of the species. Meeting this recovery criterion will require special management considerations or protection of the physical or biological features essential to the conservation of the northern spotted owl in all of the proposed critical habitat units and subunits, as described here.

The 2011 Revised Recovery Plan for the Northern Spotted Owl describes the three main threats to the spotted owl as competition from barred owls, past habitat loss, and current habitat loss (USFWS 2011, p. III–42). As the barred owl is present throughout the range of the northern spotted owl, special management considerations or protections may be required in all of the proposed 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). In addition, scientific peer reviewers and Forsman *et al.* (2011, p. 77) recommended that we address currently observed downward demographic trends in spotted owl populations by protecting currently occupied sites as well as historically occupied sites, and by maintaining and restoring older and more structurally complex multi-layered conifer forests on all lands (USFWS 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 species. 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 of the essential physical or biological features from fire, insects, disease, and climate change as well as to promote regeneration following disturbance.

As discussed in detail in the Revised Recovery Plan (USFWS 2011, pp. III–11 to III–39), long-term spotted owl recovery could benefit from forest management where the basic goals are to restore or maintain ecological processes and resilience. Special management considerations or protections may be required throughout the proposed critical habitat to achieve these goals and benefit the conservation of the owl. The natural ecological processes and landscape that once provided large areas of relatively contiguous spotted owl habitat have been altered by a history of anthropogenic activities such as timber harvest, road construction, development, agricultural conversion, and fire suppression. The resilience of these systems is now additionally challenged by the effects of climate change. As recommended in the Revised Recovery Plan for the Northern Spotted Owl, active forest management may be

required throughout the range of the owl with the goal of maintaining or restoring forest ecosystem structure, composition, and processes so they are sustainable and resilient under current and future climate conditions to provide for the long-term conservation of the species (USFWS 2011, p. III–13). For example, in some areas past management practices have decreased age-class diversity and altered the structure of forest patches; in these areas, management such as targeted vegetation treatments could simultaneously reduce fuel loads and increase canopy and age-class diversity (USFWS 2011, p. III–18). Special management considerations or protections may be required in areas with regeneration harvest in moist forests to enhance within-stand structural diversity, by emphasizing the retention of larger and older trees, or any trees with characteristics that create stand diversity, and may even require specific actions to maintain or develop suitable nest structures (USFWS 2011, p. III–20). In dry forest regions, where natural disturbance regimes and vegetation structure, composition, and distribution have been substantially altered since Euro-American settlement, vegetation management may be required to retain spotted owl habitat on the landscape by altering fire behavior and severity, and potentially to restore a more natural balance between forest vegetation and disturbance regimes. Special management considerations may be required to maintain adequate spotted owl habitat in the near term to allow spotted owls to persist in the face of threats from barred owl expansion and habitat alterations from fire and other disturbances, and to restore landscapes that are more resilient to alterations projected to occur with ongoing climate change (USFWS 2011, p. III–32).

Because the specific management approaches and types of forest where they should be applied in order to maintain sufficient suitable habitat across the range of the owl will vary geographically, here we provide more detailed recommendations of the types of management considerations or protections that may be required to preserve or enhance the essential physical or biological features for the northern spotted owl in the West Cascades/Coast Ranges of Oregon and Washington, East Cascades, Klamath and Northern California Interior Coast Ranges, and the Redwood Coast.

West Cascades/Coast Ranges of Oregon and Washington

Special management considerations or protection may be required in areas of moist forests to conserve or protect older stands that contain northern spotted owl sites (RA10: USFWS 2011, p. 43) or contain high-value northern spotted owl habitat (RA32: USFWS 2011, p. 67). Silvicultural treatments are generally not needed to maintain existing old-growth forests on moist sites (Wimberly *et al.* 2004, p. 155; Johnson and Franklin 2009, pp. 3, 39). In contrast to dry and mesic forests, short-term fire risk is generally lower in the moist forests that dominate on the west side of the Cascade Range, and occur east of the Cascades as a higher-elevation band or as peninsulas or inclusions in mesic forests. Disturbance-based management for forests and northern spotted owls in moist forest areas should be different from that applied in dry or mesic forests. Efforts to alter either fuel loading or potential fire behavior in these sites could have undesirable ecological consequences as well (Johnson and Franklin 2009, p. 39; Mitchell *et al.* 2009, pp. 653–654; USFWS 2011, p. III–17).

In general, to advance long-term northern spotted owl recovery and ecosystem restoration in moist forests in the face of climate change and past management practices, special management considerations or protections may be required that follow these principles as recommended in the 2011 Revised Recovery Plan (USFWS 2011, p. III–18):

(1) Conserve older stands that have occupied or high-value northern spotted owl habitat as described in Recovery Actions 10 and 32 (USFWS 2011, pp. III–43, III–67). On Federal lands this recommendation applies to all land-use allocations outside of Congressionally reserved Areas (see also Thomas *et al.* 2006, pp. 284–285).

(2) Management emphasis needs to be placed on meeting northern spotted owl recovery goals and long-term ecosystem restoration and conservation. When there is a conflict between these goals, actions that would disturb or remove the essential physical or biological features of northern spotted owl critical habitat need to be minimized and reconciled with long-term ecosystem restoration goals to avoid adverse modification (see Adverse Modification section for specific details).

(3) Continue to manage for large, continuous blocks of late-successional forest.

(4) Regeneration harvest, if carried out, should consider ecological forestry principles. One example that could be utilized is Franklin *et al.* (2002, pp. 417–421; 2007, entire), Drever *et al.* (2006, entire), Johnson and Franklin (2009, pp. 39–41), Swanson *et al.* (2010, entire), and others cited in the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011, pp. III–14, III–17 to III–19).

These special management considerations or protections apply to Units 1, 2, 4, 5 and 6 of the proposed revised critical habitat.

East Cascades

Special management considerations or protection may be required in the East Cascades to address the effects of past activities associated with Euro-American settlement, such as timber harvest, livestock grazing, fire suppression, and fire exclusion, that have substantially altered the inland northwest, modifying the patterns of vegetation and fuels, and subsequent disturbance regimes to the degree that contemporary landscapes no longer function as they did historically (Hessburg *et al.* 2000a, pp. 74–81; Hessburg and Agee 2003, pp. 44–46; Hessburg *et al.* 2005, pp. 134–135; Skinner *et al.* 2006, pp. 178–179; Skinner and Taylor 2006, pp. 201–203). This has affected not only the existing forest and disturbance regimes, but the quality, amount, and distribution of northern spotted owl habitat on the landscape. In order to preserve the essential physical or biological features, these dynamic, disturbance-prone forests must be managed in a way that promotes northern spotted owl conservation, responds to climate change, and restores dry forest ecological structure, composition and processes, including wildfire and other disturbances (USFWS 2011, p. III–20). The following restoration principles apply to the management that may be required in this dry forest region (USFWS 2011, pp. III–34 to III–35):

(1) Emphasize vegetation management treatments outside of northern spotted owl core areas or high-value habitat where consistent with overall landscape project goals;

(2) Design and implement restoration treatments at the landscape level;

(3) Retain and restore key structural components, including large and old trees, large snags, and downed logs;

(4) Retain and restore heterogeneity within stands;

(5) Retain and restore heterogeneity among stands;

(6) Manage roads to address fire risk; and

(7) Use wildfires to meet vegetation management objectives where appropriate.

The above principles will result in treatments that have a variety of effects on northern spotted owl habitat in the short and long term. For example, some

restoration treatments may have an immediate neutral or beneficial effect on existing northern spotted owl habitat (e.g., roads management, some prescribed fire prescriptions). Other treatments, however, may involve reductions in stand densities, canopy closure, or ladder fuels (understory vegetation that has the potential to carry up into a crown fire)—and thus affect the physical or biological features needed by the species. At the stand scale, this can result in a level of conflict between conserving existing northern spotted owl habitat and restoring dry-forest ecosystems. We typically cannot expect to meet both objectives on the same acre if that acre currently functions as suitable northern spotted owl habitat. We can reconcile this conflict, however, by managing at the landscape scale.

Land managers need to move away from implementing many small, uncoordinated and independent fuel-reduction and restoration treatments. Instead, coordinated and strategic efforts that link individual projects to the larger objectives of restoring landscapes while conserving and recovering northern spotted owl habitat are needed (sensu Sisk *et al.* 2005, entire; Prather *et al.* 2008, entire; Gaines *et al.* 2010, entire).

The special management considerations or protections identified here apply to Units 7 and 8 of the proposed revised critical habitat.

Klamath and Northern California Interior Coast Ranges

The special management considerations or protections that may be required in the Klamath and Northern California Interior Coast Ranges represent a mix of the requirements needed to maintain or enhance the essential physical or biological features in mesic and dry forest types. This region in southwestern Oregon and northwestern California is characterized by very high climatic and vegetative diversity resulting from steep gradients of elevation, dissected topography, and large differences in moisture from west to east. Summer temperatures are high, and northern spotted owls occur at elevations up to 1,768 m (5,800 ft). Western portions of this zone support a diverse mix of mesic forest communities interspersed with drier forest types. Forests of mixed conifers and evergreen hardwoods are typical of the zone. Eastern portions of this zone have a Mediterranean climate with increased occurrence of ponderosa pine. Douglas-fir dwarf mistletoe is rarely used for nesting platforms in the west, but commonly used in the east. The prey base for northern spotted owls in this zone is correspondingly diverse, but is dominated by dusky-footed woodrats, bushy-tailed woodrats, and flying squirrels. Northern spotted owls have been well studied in the Klamath portion of this zone, but relatively little is known about northern spotted owl habitat use in the California Interior Coast Range portion of the zone.

High canopy cover (65 to 75 percent), high levels of canopy layering, and the presence of very large dominant trees were all important features of nesting and roosting habitat. Compared to other zones, models of foraging habitat for this zone showed greater divergence from nesting habitat, with much lower canopy cover and tree size. Low to intermediate slope positions were strongly favored. In the eastern Klamath, presence of Douglas-fir was an important compositional variable. Habitat associations in the Klamath zone are diverse and unique, reflecting the climate, topography, and vegetation of this area. Nesting and roosting habitat somewhat resembles that of other zones, with a greater emphasis on topography that provides some relief from high temperatures. Foraging habitat in this zone includes more open forests. Consequently, management actions consistent with maintaining and developing northern spotted owl habitat need to consider local conditions. In some areas, appropriate management will be more consistent with dry forest management strategies, while in other areas wet forest management strategies will be more appropriate.

This region contains habitat characteristics of both moist and dry forests interspersed across a highly diverse landscape (Halofsky *et al.* 2011, p. 1). The special management recommendations from the moist and dry forest sections, above, apply to the management actions or protections that may be required in the Klamath and Northern California Interior Coast Ranges. Similar to the discussion in moist forests concerning conservation of small patches of early seral habitat, Perry *et al.* (2011, p. 715) noted that replacement of early successional shrub-hardwood communities by closed forests in the absence of fire significantly impacts landscape diversity. Restoration of appropriate fire regimes and use of targeted silvicultural intervention may be effective where the goal is to restore or maintain this diversity (Halofsky *et al.* 2011, p. 15).

The special management considerations or protections identified here apply to Units 9, 10, and 11 of the proposed revised critical habitat.

Redwood Coast

Special management considerations or protection may be needed in the Redwood Coast Zone to maintain or enhance the essential physical or biological features for the owl. Although the Redwood Coast zone of coastal northern California is considered part of the wet/moist forest region within the range of the northern spotted owl, there are distinct differences in northern spotted owl habitat use and diet within this zone. The long growing season in this region, combined with redwood's ability to resprout from stumps, allows redwood stands to attain suitable stand structure for nesting in a relatively short period of time (40–60 years) if legacy structures are present. Late-successional forest is an important component of nesting and roosting habitat in the Redwood Zone, and demographic productivity on northern spotted owl breeding sites has been positively correlated with the density of legacy trees in proximity to owl nest sites (Thome *et al.* 1999, p. 57). In contrast to the large, contiguous, older stands desired in other wet provinces, some degree of fine-scale fragmentation in redwood forests appears to benefit northern spotted owls. Forest openings aged 5–20 years (e.g., harvest units or burns), with dense shrub and hardwood cover, and abundant food sources, provide high-quality habitat for the northern spotted owl's primary prey, the dusky-footed woodrat. Relatively secure from owl predation, woodrats tend to overpopulate these openings and the demographic pressure drives surplus individuals into nearby older stands with sparse understories where they are highly vulnerable to owl predation. Woodrat populations within recent openings probably peak by about stand age 10. Food sources and understory cover decline steadily through about stand age 20, when the woodrat population-source diminishes. In northern spotted owl territories within the Redwood Zone, active management that creates small openings in proximity to nesting, roosting, or foraging habitat may be required to enhance northern spotted owl foraging opportunities.

The special management considerations or protections identified here apply to Unit 3 of the proposed revised critical habitat.

Summary of Special Management Considerations or Protection

We find that each of the areas occupied at the time of listing that we are proposing as critical habitat contains features essential to the conservation of the species that may require special

management considerations or protection to ensure the conservation of the northern spotted owl. These special management considerations or protection are required to preserve and enhance the essential features needed to achieve the conservation of the northern spotted owl. Additional information on management activities compatible with spotted owl conservation can be found within the Section 7 Consultation section in the proposed rule.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We have reviewed the available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulations at 50 CFR 424.12(e), based on this review, we have identified the specific areas within the geographical area occupied by the species at the time it was listed on which are found those physical or biological features essential to the conservation of the species, and which may require special management considerations or protection. In addition, we considered whether any additional areas outside those occupied at the time of listing are essential for the conservation of the species.

Occupied Areas

For the purpose of developing and evaluating this proposed revised critical habitat for the northern spotted owl, we used a definition of ''geographical area occupied by the species'' at the time it was listed consistent with the species' distribution, population ecology, and use of space. We based our identification of ''occupied'' geographical area on: (1) The distribution of verified spotted owl locations and (2) scientific information regarding spotted owl population structure and habitat associations.

Our proposed critical habitat is based in part on the distribution of approximately 4,000 spotted owl territories verified as occupied at the time of listing, across the geographical range of the species (USFWS 2011, p. C–62). We use the term ''verified'' here to represent locations for which we have records indicating the presence of spotted owls at the time of listing. These data are the result of surveys conducted by Federal and State agencies, private timber companies, and researchers between 1987 and 1996. We consider this time period to reasonably represent the time of listing because spotted owls are relatively long-lived and exhibit a high degree of fidelity to territory core areas; their territory locations are therefore relatively stable through time unless substantial changes occur to territory habitat. For this reason, we consider it highly likely that locations occupied between 1987–1990 and 1990–1996 were also occupied at the time of listing in 1990.

However, because large areas within the species' geographical range had not been surveyed, the distribution of northern spotted owl populations was incompletely known at the time the species was listed, and remains so today. For this reason, designating critical habitat based solely on the locations of territories identified through surveys would exclude a substantial proportion of the area that was likely occupied by the species at the time of listing and that provides the physical or biological features essential to the conservation of the species. To address this we developed and tested a habitat suitability model based on habitat selected by the approximately 4,000 known owl pairs. This enables us to reliably identify other areas that were likely supporting spotted owl territories at the time of listing, based on habitat value (USFWS 2011, Appendix C).

Furthermore, restricting a definition of occupancy to areas known to be used by resident territorial owls overlooks a large segment of the owl population that is not generally reflected in standard survey methodologies, as described below. Spotted owl populations consist of the territorial, resident owls for which we have documentation of occupancy throughout much of the owl's range, described above, but also includes nonterritorial adult 'floaters' and dispersing subadult owls. Both dispersing subadults and nonterritorial floaters are consistently 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 utilized by resident territorial owls. Non-territorial owls are difficult to detect in surveys because most surveys rely on territorial defense behavior of resident owls (responding to owl calls) to determine their presence. Because they are difficult to detect, the number and distribution of nonterritorial and dispersing owls is poorly known for any given spotted owl population. However, they constitute essential elements of spotted owl populations, and can reliably be assumed to occur in suitable habitat within the same landscapes occupied by territorial owls. Therefore, if suitable habitat to support northern spotted owls was present at the time the species was listed, and if the presence of northern spotted owls was documented in the same landscape, it is highly likely that non-territorial adults or dispersing subadults were also present at the time of listing.

Based on the best available scientific information regarding population structure of northern spotted owls, we define ''occupied'' as encompassing (1) home ranges of resident, territorial spotted owls known from surveys to be present at the time of listing, (2) home ranges of territorial owls determined likely to have been present at the time of listing based on a model developed specifically to predict owl presence based on relative habitat suitability, and (3) nonterritorial and dispersing owls that were likely to be present within the matrix of territories in a given landscape known to be occupied by resident owl pairs.

Having determined our working definition of the term ''occupied,'' we then defined ''specific areas'' as used in the definition of critical habitat, 16 U.S.C. 1532(5)(A)(i), to conform with known patterns of space-use and distribution exhibited by spotted owls. Spotted owls are wide-ranging organisms that maintain large home ranges and disperse relatively long distances. As described earlier, territorial northern spotted owls cover home ranges from roughly 1,400 ac (570 ha) at the southern end of their range (Zabel *et al.* 1995, p. 436) up to over 14,000 ac (5,700 ha) (USDI 1992, p. 23; USFWS 1994 in litt., p. 1) in the northern portion of the species' range. These large home ranges often overlap with those of neighboring spotted owls, such that large landscapes may be fully occupied by population clusters in areas where suitable habitat is well distributed. While this was more the case when the northern spotted owl was first listed, prior to extensive colonization of the species' range by the barred owl, many demographic study areas still exhibit a pattern of overlapping home ranges over large landscapes.

To evaluate the proportion of each subunit proposed for designation that was comprised of areas known to be occupied by northern spotted owls at the time of listing, we calculated the area within estimated home ranges (USFWS 2011, p. C–63 Table C–24) for all verified spotted owl locations known at the time of listing, as described above. Overall, 84.5 percent of the area proposed for designation is within home ranges of verified territorial spotted owl located through surveys at the time of listing; this area is entirely representative of verified owl locations,

and does not include habitat likely to be occupied based on habitat suitability or non-resident owls. Twenty-two (35 percent) of the 63 subunits proposed for designation have at least 90 percent of their area within verified known home ranges; 51 (66 percent) have at least 70 percent. As explained above, given that these areas represent occupancy by verified resident owls only, and considering the suitable habitat available at the time of listing in these same landscapes, the remainder of these areas were likely occupied by other resident owls, non-territorial adult owls (floaters) or dispersing subadults.

To help us identify and map potential critical habitat for the owl, we used a three-step modeling framework developed as part of the Revised Recovery Plan for the Northern Spotted Owl that integrates a spotted owl habitat model, a habitat conservation planning model, and a population simulation model. The details of this modeling framework are presented in Appendix C of the Revised Recovery Plan (USFWS 2011), and a detailed technical description of the modeling and habitat network selection process we used in this proposed revised designation of critical habitat is provided in Dunk *et al.* (2011, entire). Both of these supporting documents are available at *http://www.regulations.gov* (see **ADDRESSES**), or by contacting the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Each of the three models helped identify an important element of the statutory definition of critical habitat: The identification of physical or biological features needed by the species; the distribution of those features across the geographical range of the species occupied at the time of listing; and the identification of a landscape configuration where these features, as well as any necessary unoccupied areas, are essential to the conservation of the species.

The overall approach for critical habitat modeling consisted of three main steps (USFWS 2011, Appendix C, p. C–3) to help refine, select, and evaluate a series of alternative critical habitat networks for the northern spotted owl. These steps are summarized here, and then each is described in further detail.

Step 1: At the outset, the attributes of forest composition and structure and characteristics of the physical environment associated with nesting, roosting, and foraging habitat—physical and biological features used by the species—were identified based on the habitat selection exhibited by nearly 4,000 known owl pairs (USFWS 2011, pp. C–20 to C–28). We then used these physical and biological features of nesting, roosting, and foraging habitats to create a range-wide map of (relative) habitat suitability (MaxEnt) (Phillips *et al.* 2006, entire; Phillips and Dudik 2008, entire). In addition to providing a map of relative habitat suitability, this process allowed us to evaluate an area's suitability and determine whether the presence of the species was likely based on an assessment of known species-habitat relationships.

Step 2: We developed northern spotted owl habitat networks based on the relative habitat suitability map using the Zonation conservation planning model (Moilanen and Kujala 2008, entire). The Zonation model used a hierarchical prioritization of the landscape based on relative habitat suitability and other user-specified criteria (e.g., land ownership) to develop the most efficient solutions for incorporating high value habitat. Zonation analyses were conducted separately for each region to ensure that reserves would be well-distributed across the range of the owl. Zonation also allowed for consideration of land ownership in development of reserve designs.

Step 3: In the last step, we determined where the physical and biological features, as well as unoccupied areas, are essential to the conservation of the species. To do this we used a spatially-explicit northern spotted owl population model (HexSim) (Schumaker 2008, entire) to predict relative responses of northern spotted owl populations to different habitat network designs, and evaluated these responses against the recovery objectives and criteria for the northern spotted owl using a rule set based on those criteria. Simulations from these models are not meant to be estimates of what will occur in the future, but rather provide information on trends predicted to occur under different network designs; this allowed us to compare the relative performance of various habitat scenarios.

In Step 1 of the modeling framework, we created a series of spotted owl habitat models that provide the basis for mapping spotted owl habitat. Based on published research, input from individual experts, and analysis of spotted owl location and habitat data, we developed relative habitat suitability models. These relative habitat suitability models identify areas with habitat that provides the combination of variables (forest composition and structure, and abiotic factors such as elevation, precipitation, and temperature) with a high predictive probability of supporting spotted owls, based on data gathered from known owl sites. Applying these models enables the Service to identify and describe the physical or biological features essential to the conservation of the owl by correlating these features with the nesting, roosting, and foraging habitats known to be utilized by resident owls, and to map their distribution across the range of the owl (USFWS 2011, pp. C–27 to C–42, C–62). Because the models are based on data from nearly 4,000 owl sites occupied at the time of listing (USFWS 2011, p. C–62), model outputs highlight surveyed and known to be occupied habitat. However, they also identify areas with habitat likely to have supported owls at the time of listing, based on habitat suitability, and areas that may have been unoccupied at the time of listing, but that may be essential to the conservation of the species based on their relative habitat suitability and potential to provide areas with the habitat characteristics needed for population growth or dispersal (see below). To ensure that the variety of physical or biological features used by spotted owls across their range is represented in the models, we applied separate habitat models for each of 11 ecological regions based on differences in forest environments, spotted owl habitat use and prey distribution, and variation in ecological conditions. (USFWS 2011, C–7 to C–13).

In Step 2 of the modeling framework, we used a habitat conservation planning model (Zonation) (Moilanen *et al.* 2005, entire; Moilanen and Kujala 2008, entire) to develop a spotted owl conservation planning model. We used this in the critical habitat process to aggregate areas of greatest relative habitat suitability (areas that provide the physical or biological features, or essential unoccupied habitat) from Step 1 into discrete units. This process provided a series of maps representing a range of alternative critical habitat networks, each containing a different amount and distribution of spotted owl habitat quality. The Zonation model seeks to provide the most efficient design (most habitat value on smallest land area) and allowed us to maximize reliance on public lands to achieve recovery goals.

In Step 3 of the modeling framework, we developed a spotted owl population simulation model that allowed us to simulate the relative population responses of spotted owls to various habitat conservation network scenarios (HexSim) (Schumaker 2011, entire). In developing this proposed rulemaking, we used this spotted owl population simulation model to compare alternative critical habitat networks and evaluate

each design's ability to meet the recovery goals and criteria for the northern spotted owl (described further below). This step of the process enabled us to determine the amount and configuration of physical or biological features on the landscape that are essential to the conservation of the owl. It also helped us to determine which unoccupied areas are essential to the conservation of the species. By evaluating spotted owl population metrics such as relative population size, population trend, and extinction risk that resulted from each scenario evaluated, we believe we are proposing the most efficient habitat network to conserve the northern spotted owl, with the potential to support an increasing or stable population trend of northern spotted owls; that exhibits relatively low extinction risk, both rangewide and at the recovery unit scale (recovery units, as identified in the Revised Recovery Plan, are defined by physiographic provinces (USFWS 2011, pp. III–1 to III–2)), and that achieves adequate connectivity among recovery units, while prioritizing reliance on public lands.

We determined what is essential to recovery of the spotted owl by evaluating the performance of each potential critical habitat scenario considered against the recovery needs of the owl. In contrast with earlier conservation modeling efforts for the spotted owl, the modeling framework we utilized does not rely on *a priori* rule sets for features such as size of habitat blocks, number of owl pairs per block, or distance between blocks (USFWS 2011, p. C–4) to determine what is essential for the conservation of the species. Instead, we evaluated spotted owl population metrics such as relative population size and trend to determine what is essential to owl conservation, both in terms of where and how much of the physical or biological features are essential and how much unoccupied habitat is essential to meet the recovery objectives for the owl, as defined in the Revised Recovery Plan (USFWS 2011, p. ix) and detailed in our supporting documentation (Dunk *et al.* 2012, entire).

To accomplish this, we developed a rule set for the identification of critical habitat based on the ability of that habitat to meet the recovery objectives and criteria set forth in the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011, p. ix). The recovery objectives for the northern spotted owl are:

(1) Spotted owl populations are sufficiently large and distributed such that the species no longer requires listing under the Act;

(2) Adequate habitat is available for spotted owls and will continue to exist to allow the species to persist without the protection of the Act; and

(3) The effects of threats have been reduced or eliminated such that spotted owl populations are stable or increasing and spotted owls are unlikely to become threatened again in the foreseeable future.

The recovery criteria for the northern spotted owl (aside from the requirement for post-delisting monitoring) are:

Recovery Criterion 1—Stable Population Trend: The overall population trend of spotted owls throughout the range is stable or increasing over 10 years, as measured by a statistically reliable monitoring effort.

Recovery Criterion 2—Adequate Population Distribution: Spotted owl subpopulations within each province (i.e., recovery unit), excluding the Willamette Valley Province) achieve viability, as informed by the HexSim population model or some other appropriate quantitative measure.

Recovery Criterion 3—Continued Maintenance and Recruitment of Spotted Owl Habitat: The future range-wide trend in spotted owl nesting/roosting and foraging habitat is stable or increasing throughout the range, from the date of Revised Recovery Plan approval, as measured by effectiveness monitoring efforts or other reliable habitat monitoring programs.

We used the following rule set to compare and evaluate the potential of various habitat scenarios to meet these recovery objectives and criteria for the northern spotted owl, and thus determine what is essential to the conservation of the northern spotted owl:

(1) Ensure sufficient habitat to support population viability across the range of the species.

(a) Habitat can support an increasing or stable population trend, as measured by a population growth rate of 1.0 or greater.

(b) Habitat will be sufficient to insure a low risk of extinction.

(2) Support demographically stable populations in each recovery unit.

(a) Habitat can support an increasing or stable population trend in each recovery unit.

(b) Habitat will be sufficient to insure a low risk of extinction in each recovery unit.

(c) Conserve or enhance connectivity within and among recovery units.

(d) Conserve genetic diversity.

(e) Ensure sufficient spatial redundancy in critical habitat within each recovery unit.

(i) Accommodate habitat disturbance due to fire, insects, disease, and catastrophic events.

(3) Ensure distribution of spotted owl populations across representative habitats.

(a) Maintain distribution across the full ecological gradient of the historical range.

(4) Acknowledge uncertainty associated with both future habitat conditions and spotted owl population performance—including influence of barred owls, climate change, fire/disturbance risk, and demographic stochasticity—in assessment of critical habitat design.

These critical habitat objectives of supporting population viability and demographically stable populations are intended to be met in concert with the implementation of recovery actions to address other non-habitat based threats to the owl.

We applied this rule set to the outcome of HexSim runs on the various habitat scenarios considered (see Appendix C of the Revised Recovery Plan (USFWS 2011) and Dunk *et al.* 2012, entire, for all details). Each HexSim run began with a population of 10,000 females (all population metrics are in numbers of females), consisted of 100 replicates and 350 time steps for each habitat scenario considered, and included the introduction of environmental stochasticity. We then evaluated the relative performance of each habitat scenario using numerous metrics to assess the ability of that scenario to meet the specified recovery goals for the northern spotted owl, as laid out in our rule set for identifying critical habitat; these metrics were evaluated at the scale of each region, as well as collectively rangewide. Our metrics of population performance resulting from each habitat scenario considered included:

- The percentage of simulations during which the rangewide population fell below 1,250 individuals.
- The percentage of simulations during which the rangewide population fell below 1,000 individuals.
- The percentage of simulations during which the rangewide population fell below 750 individuals.
- The percentage of simulations during which the population fell below 250 in each region (using 250 as a quasi-extinction threshold).
- The percentage of simulations during which the population fell below 100 in each region (using 100 as a quasi-extinction threshold).
- The percentage of simulations that went to extinction (population = 0) in each region.

• The mean population size from time step 150 to time step 350 in each region.

• The mean population size at the last time step in each region.

• The mean population size at the last time step rangewide.

These metrics were used to comparatively evaluate the ability of each scenario under consideration to meet the recovery goals for the species and as specified in our rule set for the identification of critical habitat (measures of extinction risk are used as an indirect measure of sufficient population abundance, as well as viability). We selected habitat scenarios for further evaluation if they outperformed the other scenarios under consideration in terms of being better able to meet the population abundance, viability, and trend criteria both across regions and rangewide. In all cases, we attempted to identify the most efficient (smallest total area) that would meet the population goals essential to recovery. Our proposed critical habitat is based on the habitat network that best met all of these criteria, and then was further refined, as described below.

We also focused on public lands to the maximum extent possible (see Dunk *et al.* 2012, entire, for specific details). In this step, we compared scenarios that did not discriminate between various land ownerships, and those that prioritized publicly-owned lands. As Federal agencies have a mandate under Section 7(a)(1) of the Act to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of listed species, we looked first to Federal lands for critical habitat. However, in some areas of limited Federal ownership, State and private lands may provide areas determined to be essential to the northern spotted owl by contributing to demographic support and connectivity to facilitate dispersal and colonization. In all cases, if the scenarios under consideration provided equal contribution to recovery, as measured by the population metrics described above, we chose the scenario that prioritized publicly-owned lands. State and private lands were included only if they were necessary to achieve conservation of the species, and were determined to provide either occupied areas that support the PCEs or unoccupied areas essential to the conservation of the owl. For example, in Washington some State and private lands were identified in Spotted Owl Special Emphasis Areas (SOSEAs), which the Washington Forest Practices Board adopted in 1996 to complement the Federal recovery and conservation strategy for the spotted owl. We also considered Indian or Tribal lands in our evaluations; if habitat scenarios performed equally well with or without Indian lands, we did not include them (see Indian Lands, below).

Following the application of this modeling framework, we further refined the model-based map units after considering land ownership patterns, interagency coordination, and best professional judgment with the objective of increasing the efficiency and effectiveness, of the critical habitat proposal. The process generally consisted of modifying boundaries to better conform to existing administrative and landscape features, removing small areas of relatively lower-suitability habitat, and incorporating additional areas that may have been unoccupied at the time of listing but that were determined to be essential for population connectivity, population growth, or to accommodate maintenance of suitable habitat on the landscape for owls in the face of natural disturbance regimes (e.g., fire) or competition with the barred owl, while retaining the overall configuration of the model-based maps. We used the population simulation model to evaluate whether this revised critical habitat network continued to provide what is essential to the conservation of the northern spotted owl.

Unoccupied Areas

Based on the northern spotted owl's wide-ranging use of the landscape, and the distribution of known owl sites at the time of listing across the units and subunits proposed as critical habitat here, we believe all units and all subunits except one meet the Act's definition of being within the geographical area occupied by the species at the time of listing.

Although we designed the units and subunits proposed for designation to consist predominantly of habitat occupied at the time of listing (or highly likely to be occupied), we know that one subunit was not occupied at that time. In addition, parts of most units contain a forested mosaic which includes younger forests that may not have been occupied at the time of listing. We also recognize that there may be some uncertainty regarding areas we believe were occupied based on the presence of suitable habitat or dispersing owls but for which we do not have survey information. Therefore, we have evaluated all of these areas as if they were unoccupied and deem them to be essential to the conservation of the species because they fulfill at least one of two functions essential to the conservation of the species: population connectivity, or space for population growth.

First, there is one subunit and portions of two others that function primarily for connectivity. Although portions of these subunits may not have been occupied at the time of listing, these areas contain the dispersal and foraging habitat to support movement between adjacent subunits and are therefore essential to provide population connectivity. Many of these areas are also anticipated to develop into habitat capable of supporting nesting pairs in the future. In 1990, the Interagency Scientific Committee (ISC) (Thomas *et al.* 1990, entire) identified ''Areas of Special Concern'' in the Draft Strategy for the Conservation of the Northern Spotted Owl. The ISC defined Areas of Special Concern as lands where past natural occurrences and human actions had adversely affected habitat more than in the remainder of the physiographic province under consideration (Thomas *et al.* 1990, p. 66). Within the Areas of Special Concern described by the ISC (Thomas *et al.* 1990, pp. 66–69), we identified areas that were strategically located between subunits that would otherwise be demographically isolated. Of 63 subunits proposed for designation, three (NCO–3, ORC–4, and ECS–3) are identified as functioning primarily for population connectivity with less than 70 percent of the subunit covered by survey-located owl sites. Only one subunit (NCO–3) is considered unoccupied and was identified primarily for connectivity and additional demographic support.

Second, because the primary threat to the northern spotted owl at the time of listing was habitat loss and degradation, conservation and recovery of the species in some portions of its range is dependent on development of additional habitat to allow for population expansion and recovery. Therefore, portions of the habitat mosaic in some subunits proposed for designation within the geographical area occupied by the species at the time of listing consist of younger and/or partially-harvested forest but are essential to conservation of the species because they are capable of developing the PCEs that support nesting, roosting, or foraging by spotted owls that will be necessary for population expansion. Typically the result of past timber harvest or wildfire, these areas of younger forest contain the elements conducive to fully developing the physical or biological features essential to the conservation of the owl (they are of suitable elevation, climate, and forest

community type) but may be lacking some element of the PCEs such as large trees or dense canopies that are associated with nesting habitat. In particular, of 63 subunits proposed for designation, four (NCO–4, NCO–5, ORC–1, and RDC–4) contain proportionally greater areas of younger forests that are essential to the conservation of the species because they can develop additional habitat necessary to support viable spotted owl populations in the future. These subunits are located within Southwestern Washington and Oregon Coast Ranges Areas of Special Concern (Thomas *et al.* 1990, pp. 66–69), areas described as exhibiting a scarcity of suitable habitat due to extensive timber harvest. The recovery goal of achieving viable populations distributed across the range of the owl cannot be achieved without these areas, therefore we have determined them to be essential to the conservation of the species.

Third, each unit and subunit in this proposed revised designation of critical habitat consists of a forested mosaic comprised predominantly of habitat known from surveys and other documented sources to be occupied at the time of listing, as well as habitat that was highly likely to have been occupied at that time based on the presence of physical or biological features associated with occupancy by spotted owls or based on the likely presence of non-territorial owls. However, we recognize there is some uncertainty associated with occupancy in regard to areas that our habitat model or the population dynamics of non-territorial owls indicate were highly likely to have been occupied at the time of listing, but for which we do not specifically have documented owl sites based on surveys. In addition, within this mosaic, each subunit also contains areas of potentially suitable habitat anticipated to develop into suitable habitat in the future. These specific areas may or may not have been occupied at the time of listing. We therefore also evaluated all areas proposed for designation as if they were unoccupied at the time of listing, to determine whether such areas are essential to the conservation of the species.

Thus, even if not occupied at the time of listing, all units and subunits proposed for designation are essential to the conservation of the species because, in addition to nesting, roosting, foraging, and dispersal habitat, they provide connectivity between occupied areas, room for population expansion or growth, and the ability to provide sufficient suitable habitat on the landscape for owls in the face of natural disturbance regimes (e.g., fire). In addition, recent work has confirmed that northern spotted owls require additional areas of habitat to persist in the face of competition with barred owls (Dugger *et al.* 2011, p. 2467). Finally, since the northern spotted owl was initially listed in large part due to the threat of habitat loss or degradation, there may be some areas of potentially suitable habitat that are currently in degraded condition and in need of restoration to provide the large, contiguous areas of nesting, roosting, and foraging habitat required to sustain viable spotted owl populations. Spotted owls require these large areas of habitat due to their expansive home range requirements and the need for connectivity between subpopulations to maintain genetic diversity and support stable, viable populations over the long term. Given the effects of past habitat loss and the increased habitat area needed to offset competition from the barred owl, our assessment indicates that large areas of habitat are required across the range of the northern spotted owl to meet recovery goals.

In summary, our evaluation of the various habitat scenarios considered in the modeling process described above enabled us to determine the amount and configuration of habitat essential to the conservation of the owl, based on the relative ability of that habitat network to meet the recovery criteria of stable or increasing populations and adequate distribution of viable populations. Although this evaluation was primarily based on areas we know to have been occupied at the time of listing, our evaluation of what is essential to the conservation of the owl additionally identified areas that may not have been occupied at the time of listing if those areas were essential to meeting the recovery goals for the species. We have determined these areas to be essential to the conservation of the species, to provide for dispersal and connectivity between currently occupied areas, allow space for population growth, and to provide habitat replacement in the event of disturbances such as wildfires and competition with barred owls. We have also determined that a critical habitat designation that does not include these areas, even if they may not have been occupied at the time of listing, would be inadequate to ensure the conservation of the species. The resulting proposed revised critical habitat network represents the amount and spatial distribution of habitats that we have determined to be essential for the conservation of the northern spotted owl.

This proposal is innovative in that it anticipates that in geographical regions with drier forests and more dynamic natural disturbance regimes, a landscape approach to managing critical habitat will occur. This landscape approach recognizes that large areas are essential in these regions to accommodate disturbance-driven shifts in the physical or biological features essential for the conservation of the northern spotted owl, and that restorative management actions may be needed across these landscapes to help manage for resilience in such a dynamic ecosystem. These large landscapes, although essential to provide for the conservation of the northern spotted owl, do include within their boundaries several particular types of areas which are not proposed as critical habitat because they cannot support northern spotted owl habitat. The following types of areas are not critical habitat for the northern spotted owl, and are not included in the proposed revised designation:

- Meadows and grasslands.
- Oak and aspen (*Populus* spp.) woodlands.
- Surface mine sites.
- Developed recreation sites, including a safety buffer for hazard tree management.
- Administrative sites, including a safety buffer for hazard tree management.
- Roadways, including a safety buffer for hazard tree management.
- Other manmade structures (such as buildings, aqueducts, runways, and other paved areas) and the land on which they are located.

When determining proposed critical habitat boundaries, we made every effort to avoid including these areas because they lack physical or biological features for the northern spotted owl. Due to the limitations of mapping at such fine scales, however, we were often not able to segregate these areas from areas being proposed as critical habitat on critical habitat maps suitable for publication within the Code of Federal Regulations. Thus, we have included regulatory text clarifying that these areas are not included in the proposed designation even if within the mapped boundaries of critical habitat; 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 unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation 11 units and 63 subunits based on sufficient elements of physical or

biological features being present to support the northern spotted owl's life-history processes. Some subunits contain all of the identified elements of physical or biological features and support multiple life-history processes. Some subunits may contain only some elements of the physical or biological features necessary to support the northern spotted owl's particular use of that habitat.

Summary of Changes From Previously Designated Critical Habitat

In 2008, we designated 5,312,300 ac (2,149,800 ha) of Federal lands in California, Oregon, and Washington as critical habitat for the northern spotted owl (73 FR 47326; August 13, 2008). In this revision, we are proposing that a total of 13,962,449 ac (5,649,660 ha) be designated as critical habitat for the northern spotted owl. We have proposed the revised designation of critical habitat for the northern spotted owl to be consistent with the most current assessment of the conservation needs of the species, as described in the 2011 Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011, Appendix B). Of the proposed designation, 4,159,678 ac (1,683,362 ha) are the same as in the 2008 designation. Of the current proposed designation, 9,802,771 ac (3,966,298 ha) are lands not formerly designated in 2008, and 1,152,662 ac (466,438 ha) of lands that were included in the former designation are not proposed here, for reasons detailed below.

The Service recognizes that this proposed revision of critical habitat represents an increase in the total land area identified from previous designations in 1992 and 2008. This increase in area is due, in part, to (a) the unanticipated steep decline of the spotted owl and the impact of the barred owl, requiring larger areas of habitat to maintain sustainable spotted owl populations in the face of competition with the barred owl (Dugger *et al.* 2011, p. 2467); (b) the recommendation from the scientific community that the conservation of more occupied and high-quality habitat is essential to the conservation of the species (Forsman *et al.* 2011, p. 77); (c) the need to maintain sufficient suitable habitat for northern spotted owls 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); and (d) in contrast to the previous critical habitat designation, the inclusion of significant areas of Federal reserve lands (e.g., national parks and wilderness areas) and some State and private lands in areas where Federal lands were not sufficient to meet the conservation needs of the spotted owl.

We expect to refine this proposed designation based on public comments, additional information from coordination with the land management agencies, scientific peer review, and consideration of exclusions and exemptions (per sections 4(b)(2) and 4(a)(3)(B) of the Act, respectively). Fine-scale adjustments to proposed critical habitat maps are also anticipated based on Service collaboration with Federal, State, and private land managers and receipt of site-specific information on habitat and landscape conditions.

The new delineation of areas determined to provide the physical or biological features essential for the conservation of the northern spotted owl, or otherwise determined to be essential for the conservation of the species, was based, in part, on an improved understanding of the forest characteristics and spatial patterns that influence habitat usage by northern spotted owls which were incorporated into the latest population evaluation and mapping technology. The modeling process we used to evaluate alternative critical habitat scenarios differed fundamentally from the conservation planning approach used to inform the 1992 and 2008 designations of critical habitat for the northern spotted owl. These past designations relied on *a priori* rule sets derived from best expert judgment regarding the size of reserves or habitat conservation blocks, target number of spotted owl pairs per reserve or block, and targeted spacing between reserves or blocks (USFWS 2011, p. C–4), which we then assessed and refined using expert opinion. The current proposed revised designation reflects our use of a series of spatially explicit modeling processes to determine where biological features are essential to the conservation of the northern spotted owl, and in the case of unoccupied habitat, to determine the areas that are essential to the conservation of the owl, as described in Criteria Used to Identify Critical Habitat, below. These models enabled us to compare potential critical habitat scenarios in a repeatable and scientifically accepted manner (USFWS 2011, p. C–4), using current tools that capitalize on new spatial information and algorithms for identifying efficient habitat networks essential for conservation.

The areas proposed for designation are lands that were occupied at the time of listing and that currently provide suitable nesting, roosting, foraging, or dispersal habitat for northern spotted owls, or that are otherwise essential to the conservation of the species. However, as noted above, not every site of known owl occupancy is included in the proposed revised designation. We did not include owl sites if they were isolated from other known occurrences or in areas of marginal habitat quality such that they were unlikely to make a significant contribution to the conservation of the species, and therefore were not considered to provide the essential features.

The habitat network development and evaluation strategy we used attempts to maximize the efficiency of the network by prioritizing lands for inclusion in the critical habitat network where management direction is more predictable and where resources are more available to conduct many of the ecosystem restoration projects the Service recommends within critical habitat. Utilization of new scientific information and advanced modeling techniques accounts for many of the changes in the proposed revised critical habitat, since the location of areas essential to northern spotted owls may have shifted based on the best information available regarding the spatial distribution of high-value habitat. Late-successional reserves (LSRs) and Congressionally withdrawn lands (e.g., national parks) were not prioritized in this approach based solely on their status as a reserved land allocation, but were included only where the habitat quality was high enough to meet the selection criteria. LSRs were not originally designated solely to meet the needs of the northern spotted owl, but may include areas designated for other late-successional forest species. Therefore, not all LSRs contain habitat of sufficient quality to be included in the critical habitat network for the northern spotted owl.

Table 2 shows a comparison of areas included in the 2008 designation and those proposed in this proposed revision to critical habitat. The process we used to determine occupied areas containing essential features and unoccupied areas essential to the conservation of the species is described in Criteria Used to Identify Critical Habitat.

TABLE 2—COMPARISON OF AREA INCLUDED IN 2008 CRITICAL HABITAT AND 2012 PROPOSED CRITICAL HABITAT BY REGION—THE 11 REGIONS ARE DESCRIBED IN DETAILS IN THE PROPOSED REVISED CRITICAL HABITAT DESIGNATION SECTION

Modeling region	2011 Proposed critical habitat		2008 Final critical habitat	
	Acres	Hectares	Acres	Hectares
North Coast Olympics	1,595,821	645,806	485,039	196,289
Oregon Coast	891,154	360,637	507,082	205,209
Redwood Coast	1,550,747	626,847	70,153	28,390
West Cascades North	820,832	332,179	390,232	157,921
West Cascades Central	1,353,045	547,558	546,333	221,093
West Cascades South	1,624,836	657,548	700,421	283,450
East Cascades North	1,919,469	776,781	687,702	278,303
East Cascades South	526,810	213,192	207,291	83,888
Klamath West	1,291,606	522,693	667,795	270,247
Klamath West	1,111,679	449,881	667,795	270,247
Inner California Coast Ranges	1,276,450	516,537	535,863	216,856
Grand total	13,962,449	5,649,660	5,312,327	2,149,823

The reduction in number of critical habitat units from 33 in 2008 to 11 in 2011 is a reflection, in part, of our decision to aggregate habitat by regions. The current designation includes 33 critical habitat units; the proposed revision includes 11 critical habitat units with 63 subunits.

Our proposed determination of PCEs in this proposed revised designation incorporates new information resulting from research conducted since the last revision in 2008. This new information, along with relevant older studies, allowed us to include a higher level of specificity in the PCEs in this revision. This proposal also includes two changes in overall organization. The 2008 revised designation considered nesting and roosting habitat as separate PCEs. In this version, we have combined these habitat types. Spotted owls generally use the same habitat for both nesting and roosting; they are not separate habitat types, and function differs only based on whether a nest structure is present. These structures can be difficult to detect during field surveys in some portions of the subspecies range, and are virtually impossible to detect via remote sensing. Our models of spotted owl habitat relied on remotely sensed data. At the scale of a rangewide proposal of critical habitat, nesting and roosting habitats cannot be systematically distinguished, and, therefore, we combined them in our analysis and resulting proposal. For project planning and management of spotted owls at the local scale, the distinction between nesting and roosting habitat remains useful, especially in portions of the subspecies range where nesting structures are conspicuous (e.g., mistletoe brooms). The second organizational change was to subdivide the range of the subspecies into four separate regions, and to describe PCEs for foraging habitat separately for each of these regions.

Finally, in this proposed rule we provide a more detailed and specific characterization of the PCEs for the northern spotted owl. Although described in more detail in the preamble, the actual rulemaking section of the 1992 designation described the PCEs only as ''forested areas that are used or potentially used by northern spotted owl for nesting, roosting, foraging, or dispersing'' (57 FR 1838; January 15, 1992). Research since the 1992 designation of critical habitat has largely confirmed our understanding of the PCEs as presented in the discussion section of that final rule (Blakesley 2004, entire), but this revision seeks to incorporate the specific description of those PCEs, as described earlier in the Primary Constituent Elements section of this document, into the Proposed Regulation Promulgation Section. For example, the proposed rule describing the PCEs now includes a list of the specific forest types used by northern spotted owls, as well as a description of the particular habitat components (tree size, canopy closure, nest platforms, etc.) used by northern spotted owls for nesting, roosting, foraging, and dispersal. Furthermore, recognizing that not all PCEs apply universally throughout the broad range occupied by the northern spotted owl, we have provided descriptions of PCEs specific to each of the four major ecoregional divisions within the range of the species.

Proposed Revised Critical Habitat Designation

Consistent with the standards of the Act, our regulations, and agency practice, we have identified 13,962,449 ac (5,649,660 ha) in 11 units and 63 subunits as meeting the definition of critical habitat for the northern spotted owl. The 11 units we have identified as critical habitat 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. All of the critical habitat units were largely occupied at the time of listing, may include some smaller areas that were not known to be occupied at the time of listing but have been determined to be essential to the conservation of the species, and are presently occupied by the northern spotted owl. Land ownership of the proposed critical habitat includes Federal, State, and private lands (private lands are intended for inclusion in a critical habitat subunit only in those cases where private land is identified as a component of critical habitat in the subunit description). In Washington, some private lands have been identified in the Spotted Owl Special Emphasis Areas (SOSEAs) that the Washington Forest Practices Board adopted in 1996. We acknowledge that some additional private lands (e.g. subdivisions, small (typically less than 10 ac (4 ha)) properties owned by individual landowners) may have been inadvertently included on the map as an artifact of both the modeling process and limitations on map resolution and accuracy, but any such private lands are not intended to be included in the proposed designation. We are seeking public comments to help us make any needed corrections in the final rule. No Indian lands are included in the critical habitat designation. The approximate area of each proposed critical habitat

unit is shown in Table 3. Table 4 gives a total of critical habitat being proposed by land ownership.

TABLE 3—PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE NORTHERN SPOTTED OWL

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

Critical habitat unit	Acres	Hectares
Unit 1—North Coast Olympics:		
Federal	1,457,564	589,855
State	137,318	55,571
Private	939	380
Total	1,595,821	645,806
Unit 2—Oregon Coast Ranges:		
Federal	813,215	329,096
State	77,939	31,541
Total	891,154	360,637
Unit 3—Redwood Coast:		
Federal	299,548	121,223
State	203,102	82,192
Private	1,048,097	423,431
Total	1,550,747	626,847
Unit 4—West Cascades North:		
Federal	709,022	286,931
State	111,222	45,010
Private:	588	238
Total	820,832	332,179
Unit 5—West Cascades Central:		
Federal	1,248,708	505,334
State	57,400	23,229
Private	46,937	18,995
Total	1,353,045	547,558
Unit 6—West Cascades South:		
Federal	1,624,836	657,548
Unit 7—East Cascades North:		
Federal	1,725,491	698,281
State	58,911	23,840
Private	135,067	54,660
Total	1,919,469	776,781
Unit 8—East Cascades South:		
Federal	526,810	213,192
Unit 9—Klamath West:		
Federal	1,281,145	518,460
State	10,461	4,233
Total	1,291,606	522,693
Unit 10—Klamath East:		
Federal	1,108,839	448,732
State	2,840	1,149
Total	1,111,679	449,881
Unit 11—Inner California Coast Ranges:		
Federal	1,229,174	497,429
State	12,123	4,906
Private	35,153	14,202
Total	1,276,450	516,537
Grand total	13,962,449	5,649,660

Note: Area sizes may not sum due to rounding.

TABLE 4—PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE NORTHERN SPOTTED OWL, DESCRIBING AREA INCLUDED UNDER DIFFERENT LANDOWNERSHIPS

	Acres	Hectares
USFS	9,527,128	3,855,492
BLM	1,483,666	600,419
NPS	998,585	404,113
State	671,036	271,558
Private	1,267,704	512,279
Other Federal (DOD)	14,330	5,799
Indian	0	0
Total	13,962,449	5,649,660

We present brief descriptions of all units and their subunits below.

Unit 1: North Coast Ranges and Olympic Peninsula (NCO)

Unit 1 consists of 1,595,821 ac (645, 806 ha), and contains five subunits. This unit consists of the Oregon and Washington Coast Ranges Section M242A, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994a, Section M242A). This region is characterized by high rainfall, cool to moderate temperatures, and generally low topography (1,470 to 2,460 ft (448 to 750 m)). High elevations and cold temperatures occur in the interior portions of the Olympic Peninsula, but spotted owls in this area are limited to the lower elevations (less than 2,950 ft (900 m)). Forests in the NCO are dominated by western hemlock, Sitka spruce, Douglas-fir, and western red cedar (*Thuja plicata*). Hardwoods are limited in species diversity (consist mostly of bigleaf maple and red alder (*Alnus rubra*)) and distribution within this region, and typically occur in riparian zones. Root pathogens like laminated root rot (*Phellinus weirii*) are important gap formers, and vine maple (*A. circinatum*), among others, fills these gaps. Because Douglas-fir dwarf mistletoe is unusual in this region, spotted owl nesting habitat consists of stands providing very large trees with cavities or deformities. A few nests are associated with western hemlock dwarf mistletoe (*Arceuthobium tsugense* subsp. *tsugense*). Spotted owl diets are dominated by species associated with mature to late-successional forests (flying squirrels, red tree voles), resulting in similar definitions of habitats used for nesting/roosting and foraging by spotted owls.

Subunit Descriptions—Unit 1

NCO–1. The NCO–1 subunit consists of approximately 747,000 ac (302,300 ha) in Clallam, Jefferson, Grays Harbor, and Mason Counties, Washington, and comprises lands managed by the National Park Service, Forest Service, State of Washington, and private landowners. Of this subunit, 421,078 ac (170,404 ha) are managed as part of the Olympic National Park as a Congressionally reserved or wilderness area under the NWFP and are proposed for exclusion in the final designation. The FS manages 233,116 ac (94,339 ha) as Late-successional Reserves to maintain functional, interactive, late-successional and old-growth forest ecosystems; 11,119 ac (4,500 ha) as Congressionally reserved or wilderness areas (proposed for exclusion); and 80,728 ac (32,669 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. Private landowners manage 939 ac (380 ha) for various uses within the Hoh-Clearwater Spotted Owl Special Emphasis Area (SOSEA), including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current and past timber harvest, competition with barred owls, and isolation on a peninsula (along with subunit NCO–2). This subunit is expected to function primarily for demographic support of the overall population. NCO–1 is located primarily in the watersheds of Lyre, Hoko, Soleduck, Hoh, Quinault, Queets, and Clearwater rivers, and includes the northern part of the Lower Chehalis River watershed.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 94 percent of the area of NCO–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

NCO–2. The NCO–2 subunit consists of approximately 494,477 ac (200,108 ha) in Kitsap, Clallam, Jefferson, Grays Harbor, and Mason Counties, Washington, and comprises lands managed by the National Park Service, and Forest Service. Of this subunit, 226,223 ac (91,549 ha) are managed as part of the Olympic National Park as a Congressionally reserved or wilderness area under the NWFP and are proposed for exclusion in the final designation. The FS manages 171,649 ac (69,464 ha) as Late-successional Reserves to maintain functional, interactive, late-successional and old-growth forest ecosystems; 50,713 ac (20,523 ha) as Congressionally reserved or wilderness areas (also proposed for exclusion); and 45,909 ac (18,579 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. Threats in this subunit include current and past timber harvest, competition with barred owls, and isolation on a peninsula (along with subunit NCO–1). This subunit is expected to function primarily for demographic support of the overall population. NCO–2 is located primarily in the watersheds of the Elwha, Dungeness, Quilcene, Snow, Skokomish, and Dosewallips rivers.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 95 percent of the area of this subunit was covered by

verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

NCO–3. The NCO–3 subunit consists of approximately 14,313 ac (5,792 ha) in Thurston and Grays Harbor Counties, Washington, and comprises lands managed by the Department of Defense as part of Joint Base Lewis-McChord under their base management plan, which includes timber management. Threats in this subunit include current and past timber harvest, competition with barred owls, limited total habitat area, stand conversion, and isolation from surrounding subunits. This subunit, along with the Mineral Block SOSEA in the WCC–1 subunit and Federal lands adjacent to this SOSEA are meant to provide opportunities for demographic support between the West Cascades Central Unit and the North Coast Olympic Unit. In this subunit, we are considering exemption of lands on Joint Base Lewis-McChord under section 4(a)(3)(B) of the Act.

Available information indicates that subunit NCO–3 was unoccupied by spotted owls at the time of listing. However, this subunit is essential to the conservation of the species because it provides essential habitat connectivity for owls dispersing between occupied habitats in the Olympic Peninsula and the Western Cascades. Populations in the Olympic Peninsula are currently-isolated, and require stepping-stones containing both nesting and dispersal habitat to provide for genetic exchange with other owl populations. Proposed critical habitat in this subunit has the potential to develop sufficient nesting, roosting, and foraging habitat to support a limited number of nesting spotted owls. Opportunities to nest successfully in NCO–3 will increase the likelihood of successful movement of spotted owls between widely separated populations by providing an opportunity for dispersal to occur across generations. The designation of this subunit as critical habitat is necessary because limiting the designation to areas presently occupied by the species would be inadequate to achieve the conservation of the northern spotted owl. Without this subunit, connectivity and demographic support between the Olympic Peninsula and Western Cascades will be lacking, and the Olympic Peninsula population of spotted owls will remain isolated and potentially subject to inbreeding depression and other negative effects associated with isolated populations. The Western Cascades also has been identified as at risk due to low populations numbers and isolation from the Olympic Peninsula (Thomas *et al.* 1990, pp. 66–67). The achievement of a stable population and adequate population distribution, as required by Recovery Criteria 1 and 2 of the Revised Recovery Plan, cannot be met without this essential subunit.

NCO–4. The NCO–4 subunit consists of approximately 132,086 ac (553,453ha) in Clatsop, Columbia, Tillamook, and Washington Counties, Oregon, and comprises Federal lands and lands managed by the State of Oregon. Of this subunit, 122,675 ac (49,645 ha) are managed as part of the Tillamook and Clatsop State Forests for multiple uses including timber revenue production, recreation, and wildlife habitat according to the Northwest Oregon State Forest Management Plan (ODF 2010a, entire) and may be considered for exclusion in the final designation. Federal lands encompass 9,410 ac (3,808 ha) of this subunit and are managed as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population. This subunit is isolated from the nearest subunit to the north but is adjacent to subunit NCO–5 to the south.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 63 percent of the area of NCO–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider a large part of this subunit to have been occupied at the time of listing. There are some areas of younger forest in this subunit that may have been unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat in this subunit is especially important for providing for population expansion and additional demographic support in this region. The development of additional suitable habitat in this subunit is needed to support viable spotted owl populations over the long term. The recruitment of additional suitable habitat will also contribute to the successful dispersal of spotted owls, and serve to buffer spotted owls from competition with the barred owl.

NCO–5. The NCO–5 subunit consists of approximately 213,024 ac (86,207 ha) in Yamhill, Lincoln, Tillamook, and Polk Counties, Oregon, and comprises lands managed by the State of Oregon, the BLM and the Forest Service. Of this subunit 14,643 ac (5,925 ha) are managed by the State of Oregon for multiple uses including timber revenue production, recreation, and wildlife habitat according to the Northwest Oregon State Forest Management Plan (ODF 2010a, entire), and may be considered for exclusion from the final critical habitat designation. Federal lands comprise 198,368 ac (80,277 ha) and are managed as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population and north-south connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 63 percent of the area of NCO–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider a large part of this subunit to have been occupied at the time of listing. There are some areas of younger forest in this subunit that may have been unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the

continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat in this subunit is especially important for providing for population expansion and additional demographic support in this region. The development of additional suitable habitat in this subunit is needed to support viable spotted owl populations over the long term. The recruitment of additional suitable habitat will also contribute to the successful dispersal of spotted owls, and serve to buffer spotted owls from competition with the barred owl.

Unit 2: Oregon Coast Ranges (OCR)

Unit 2 consists of 891,166 ac (360,642 ha) and contains six subunits. This unit consists of the southern third of the Oregon and Washington Coast Ranges Section M242A, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994a, Section M242A). We split the section in the vicinity of Otter Rock, OR, based on gradients of increased temperature and decreased moisture that result in different patterns of vegetation to the south. Generally this region is characterized by high rainfall, cool to moderate temperatures, and generally low topography (980 to 2,460 ft (300 to 750 m)). Forests in this region are dominated by western hemlock, Sitka spruce, and Douglas-fir; hardwoods are limited in species diversity (largely bigleaf maple and red alder) and distribution, and are typically limited to riparian zones. Douglas-fir and hardwood species associated with the California Floristic Province (tanoak, Pacific madrone, black oak, giant chinquapin (*Castanopsis chrysophylla*)) increase toward the southern end of the OCR. On the eastern side of the Coast Ranges crest, habitats tend to be drier and dominated by Douglas-fir. Root pathogens like laminated root rot are important gap formers, and vine maple among others fills these gaps. Because Douglas-fir dwarf mistletoe is unusual in this region, spotted owl nesting habitat tends to be limited to stands providing very large trees with cavities or deformities. A few nests are associated with western hemlock dwarf mistletoe. Spotted owl diets are dominated by species associated with mature to late-successional forests (flying squirrels, red tree voles), resulting in similar definitions of habitats used for nesting/roosting and foraging by spotted owls. One significant difference between OCR and NCO is that woodrats comprise an increasing proportion of the diet in the southern portion of the modeling region.

Subunit Descriptions—Unit 2

OCR–1. The OCR–1 subunit consists of approximately 116,576 ac (47,177 ha) in Polk, Benton and Lincoln Counties, Oregon, and comprises lands managed by the State of Oregon, the BLM, and the Forest Service. Of this subunit 7,296 ac (2,953 ha) are managed by the State of Oregon for multiple uses including timber revenue production, recreation, and wildlife habitat according to the Northwest Oregon State Forest Management Plan (ODF 2010a, entire) and may be considered for exclusion in the final critical habitat designation. Federal lands comprise 109,279 ac (44,224 ha) and are managed as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved Federal lands in this unit are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population and north-south connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 55 percent of the area of OCR–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider a large part of this subunit to have been occupied at the time of listing. There are some areas of younger forest in this subunit that may have been unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat in this subunit is especially important for providing for population expansion and additional demographic support in this region. The development of additional suitable habitat in this subunit is needed to support viable spotted owl populations over the long term. The recruitment of additional suitable habitat will also contribute to the successful dispersal of spotted owls, and serve to buffer spotted owls from competition with the barred owl.

OCR–2. The OCR–2 subunit consists of approximately 278,526 ac (112,715 ha) in Lane, Benton, and Lincoln Counties, Oregon, and comprises lands managed by the State of Oregon, the BLM and the Forest Service. Of this subunit 18,648 ac (7,547 ha) are managed by the State of Oregon for multiple uses including timber revenue production, recreation, and wildlife habitat according to the Northwest Oregon State Forest Management Plan (ODF 2010a, entire) and may be considered for exclusion in the final critical habitat designation. Federal lands comprise 259,878 ac (105,169 ha) and are managed as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved Federal lands in this unit are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population and north-south connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 77 percent of the area of OCR–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

OCR–3. The OCR–3 subunit consists of approximately 198,497 ac (80,329 ha) in Lane and Douglas Counties, Oregon, and comprises lands managed by the State of Oregon, the BLM, and the Forest Service. Of this subunit 4,970 ac (2,011 ha) are managed by the State of Oregon for multiple uses including timber revenue production, recreation, and wildlife habitat according to the Northwest Oregon State Forest

Management Plan (ODF 2010a, entire) and may be considered for exclusion in the final critical habitat designation. Federal lands comprise 193,526 ac (78,317 ha) and are managed as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population and for both north-south and east-west connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 97 percent of the area of OCR–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

OCR–4. The OCR–4 subunit consists of approximately 9,305 ac (3,766 ha) in Lane and Douglas Counties, Oregon, and comprises lands managed by the BLM as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for east-west connectivity between subunits and CHUs, and between the Oregon coast and the western Cascades.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 43 percent of the area of OCR–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider a large part of this subunit to have been occupied at the time of listing. There are some areas of younger forest in this subunit that may have been unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat in this subunit is especially important for providing essential connectivity between currently occupied areas to support the successful dispersal of spotted owls, and may also help to buffer spotted owls from competition with the barred owl.

OCR–5. The OCR–5 subunit consists of approximately 184,248 ac (74,563 ha) in Coos and Douglas Counties, Oregon, and comprises lands managed by the State of Oregon, the BLM, and the Forest Service. Of this subunit 46,994 ac (19,018 ha) are managed by the State of Oregon for multiple uses including sustained economic benefit through timber harvest and management, recreation, and wildlife habitat according to the Elliot State Forest Management Plan (ODF 2011, entire) and may be considered for exclusion in the final critical habitat designation. Federal lands comprise 137,254 ac (55,545 ha) and are managed as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population and for north-south, and potentially east-west, connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 94 percent of the area of OCR–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

OCR–6. The OCR–6 subunit consists of approximately 84,365 ac (34,141 ha) in Coos and Douglas Counties, Oregon, and comprises lands managed by the BLM as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population and for north-south connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 97 percent of the area of OCR–6 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Unit 3: Redwood Coast (RWC)

Unit 3 contains 1,550,747 ac (626,847 ha) and five subunits. This unit consists of the Northern California Coast Ecological Section 263, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994b, entire). This region is characterized by low-lying terrain (0 to 2,950 ft (0 to 900 m)) with a maritime climate, generally mesic conditions, and moderate temperatures. Climatic conditions are rarely limiting to spotted owls at all elevations. Forest communities are dominated by redwood, Douglas-fir-

tanoak forest, coast live oak, and tanoak series. The vast majority of the region is in private ownership, dominated by a few large industrial timberland holdings. The results of numerous studies of spotted owl habitat relationships suggest stump-sprouting and rapid growth rates of redwoods, combined with high availability of woodrats in patchy, intensively-managed forests, enables spotted owls to maintain high densities in a wide range of habitat conditions within the Redwood zone.

Subunit Descriptions—Unit 3

RDC–1. This subunit contains 877,193 ac (354,987 ha) in Curry County, Oregon and in Del Norte, Humboldt, and Trinity Counties, California. There are 188,056 ac (76,104 ha) of Federal lands in the subunit, managed by the Forest Service, National Park Service, and Bureau of Land Management. California State Park System lands make up 110,163 ac (44,581 ha) and are proposed for exclusion in the final critical habitat designation. This subunit contains 578,974 ac (234,302 ha) of private land. A large portion of these lands are included in two large private forests that have Habitat Conservation Plans with conservation strategies for northern spotted owls; these are Green Diamond Resource Company with 136,008 ac (55,041 ha) and Humboldt Redwood Company with 211,700 ac (85,672 ha) and both are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from the barred owl. Suitable habitat within the subunit is relatively contiguous north-to-south, and is capable of supporting a sustainable subpopulation of owls. We expect that this subunit will provide strong connectivity among the adjacent CHUs to the north (OCR) and east (KLW, ICC). The subunit is weakly connected to the adjacent subunit to the south (RDC–2).

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 78 percent of the area of RDC–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

RDC–2. This subunit contains 484,880 ac (196,224 ha) in Mendocino and southwestern Humboldt Counties, California. There are 32,021 ac (12,958 ha) of Federal lands in the subunit, managed by the Bureau of Land Management. California State Park System lands make up 19,115 ac (7,736 ha) and are proposed for exclusion in the final critical habitat designation. The California Department of Forestry and Fire Protection operates the Jackson Demonstration State Forest (48,652 ac (19,689 ha)) for multiple uses including timber production, water quality, wildlife habitat, and research and also may be considered for exclusion. Approximately 385,100 ac (155,845 ha) of private land is included in this subunit. Two large private forest land ownerships may be considered for exclusion. The first is Mendocino Redwood Company, which is in the process of developing a conservation strategy for northern spotted owls under a proposed Habitat Conservation Plan. The second holding is known as the Campbell-Hawthorne lands, owned by the Redwood Forest Foundation, Inc. (RWFI, non-profit) and managed by the Campbell Group, LLC (90,000 acres (36,423 ha)). The Campbell Group has approached us previously to explore the possibility of developing an HCP and more recently to explore a SHA. Three medium-sized private landholdings within this holding, Usal Forest, Big River Forest and Salmon Creek Forest, are under conservation easements and we propose to exclude these lands in the final critical habitat designation. Together, these easement holdings make up 66,513 ac (26,917 ha). Special management considerations or protection are required in this subunit to address threats from the barred owl. Suitable habitat within the subunit is relatively contiguous north-to-south, and is capable of supporting a sustainable subpopulation of owls. The subunit is weakly connected to the adjacent CHU to the east (ICC) and to the coastal subunit to the north (RDC–1); it is relatively well connected to the coastal subunit to the south (RDC–3).

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 85 percent of the area of RDC–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

RDC–3. This subunit contains 46,785 ac (18,933 ha) in southwestern Mendocino and northwestern Sonoma Counties, California. These lands are concentrated in the Garcia and Gualala River drainages. There are no Federal lands in the subunit. There are 243 ac (98 ha) of land in the California State Park System and are proposed for exclusion, and the remaining 46,541 ac (18,835 ha) is private land. Two management tracts of the Mendocino Redwood Company (discussed in RDC–2) are located in this subunit: Annapolis (7,044 ac (2,851 ha)) and Garcia River (15,634 ac (6,327 ha)) and may be considered for exclusion in the final critical habitat designation. One medium-sized private landholding, Garcia River Forest (23,864 ac (9,658 ha)), is operated by a nonprofit organization under a conservation easement and we propose to exclude this forest in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from the barred owl. Suitable habitat within the subunit is discontinuous from north-to-south, and may not be capable of supporting a self-sustaining subpopulation of owls without support from the subunit to the north (RDC–2). The subunit is poorly connected to the adjacent CHU to the east (ICC) and to the coastal subunit to the south (RDC–4).

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 80 percent of the area of RDC–3 was covered by verified spotted owl home ranges at the time of

listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

RDC–4. This subunit contains 31.497 ac (12,746 ha) in southwestern Sonoma County, California. These lands are concentrated north of the Russian River. There are no Federal lands in the subunit, and there are 13,421 ac (5,431 ha) of land in the California State Park system and are proposed for exclusion in the final critical habitat designation. Private lands total 18,074 ac (7,315 ha) of mixed forest and grazing land and may be considered for exclusion in the final designation of critical habitat. Developed and undeveloped residential subdivisions, commercially-zoned lands, and individual parcels less than 40 acres that may have been included in the mapped area are not being proposed as critical habitat. There are no industrial forest landholdings in this subunit. Special management considerations or protection are required in this subunit to address threats from the barred owl. Suitable habitat within the subunit is discontinuous throughout, interspersed with grassland, oak woodland, and chaparral, and may not be capable of supporting a self-sustaining subpopulation of owls without support from the subunit to the north (RDC–3). The subunit is poorly connected to the adjacent CHU to the east (ICC) and to the coastal subunit to the south (RDC–5).

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 65 percent of the area of RDC–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider a large part of this subunit to have been occupied at the time of listing. There are some areas of younger forest in this subunit that may have been unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat in this subunit is especially important for providing for population expansion and additional demographic support in this region. The development of additional suitable habitat in this subunit is needed to support viable spotted owl populations over the long term. The recruitment of additional suitable habitat will also contribute to the successful dispersal of spotted owls, and serve to buffer spotted owls from competition with the barred owl.

RDC–5. This subunit contains 77,798 acres (31,484 hectares) in southern Marin County, California and represents the southern range limit of the subspecies. No private lands are proposed for designation in this subunit. There are 44,866 ac (18,157 ha) of National Park land within the subunit, and an additional 11,524 ac (4,464 ha) of California State park lands both of which are proposed for exclusion. The Mount Tamalpais Watershed (18,900 ac (7,649 ha)) of the Marin Municipal Water District has been proposed for designation; as have six Open Space Preserves totaling 2,492 ac (1,008 ha) in the Marin County Parks system and may be considered for exclusion in the final designation. Special management considerations or protection are required in this subunit to address incipient threats from the barred owl. Suitable habitat within the subunit is continuous from east to west. It is unknown whether this subunit is capable of supporting a self-sustaining subpopulation of owls without support from the subunit to the north (RDC–4). The lands between this subunit and the nearest subunit to the east (ICC–6) are dominated by agricultural and urban land use, and are very weakly connected.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 82 percent of the area of RDC–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Unit 4: West Cascades North (WCN)

This unit contains 802, 832 ac (332,179 ha) and two subunits. This unit coincides with the northern Western Cascades Section M242B, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994a, Section M242B), combined with the western portion of M242D (Northern Cascades Section), extending from the U.S.-Canadian border south to Snoqualmie Pass in central Washington. It is similar to the Northern Cascades Province of Franklin and Dyrness (1988, pp. 17–20). This region is characterized by high mountainous terrain with extensive areas of glaciers and snowfields at higher elevation. The marine climate brings high precipitation (both annual and summer) but is modified by high elevations and low temperatures over much of this modeling region. The resulting distribution of forest vegetation is dominated by subalpine species, mountain hemlock and silver fir; the western hemlock and Douglas-fir forests typically used by spotted owls are more limited to lower elevations and river valleys (spotted owls are rarely found at elevations greater than 4,200 ft (1,280 m) in this region) grading into the mesic Puget lowland to the west.

Subunit Descriptions—Unit 4

WCN–1. The WCN–1 subunit consists of approximately 613,375 ac (248,224 ha) in Whatcom, Skagit, and Snohomish Counties, Washington, and comprises lands managed by the National Park Service, Forest Service, State of Washington, and private landowners. Of this subunit, 12,649 ac (5,119 ha) are managed as part of the North Cascades National Park and Recreation Area as a Congressionally reserved or wilderness area under the NWFP and we propose to exclude these lands in the final critical habitat designation. The Forest Service manages 433,592 ac (175,469

ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; 66,653 ac (26,974 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 4,873 ac (1,972 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources manages 95,837 ac (38,784 ha) for multiple uses, including timber revenue production, water quality, recreation and wildlife habitat. Threats in this subunit include current and past timber harvest, competition with barred owls, steep topography with high-elevation ridges that separate relatively small, linear strips of suitable habitat in valley bottoms, and location at the northern limit of the subspecies range. This subunit is expected to function primarily for demographic support of the overall population and to maintain the subspecies distribution in the northernmost portion of its range. WCN–1 is located in the watersheds of the Stillaguamish, Skagit, and Nooksack rivers, and is bounded on the north by the international boundary with British Columbia, Canada. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 92 percent of the area of WCN–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCN–2. The WCN–2 subunit consists of approximately 206,885 ac (83,723 ha) in King and Snohomish Counties, Washington, and comprises lands managed by the Forest Service, State of Washington, and private landowners. The Forest Service manages 104,821 ac (42,420 ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; 86,274 ac (35,914 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 296 ac (120 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources manages 15,569 ac (6,300 ha) for multiple uses, including timber revenue production, water quality, recreation, and wildlife habitat. Threats in this subunit include current and past timber harvest, competition with barred owls, and steep topography with high-elevation ridges that separate relatively small, linear strips of suitable habitat in valley bottoms. This subunit has a key role in maintaining connectivity between spotted owl populations, both north to south in the West Cascades and west to east between the West and East Cascades units. This role is shared with the WCC–1 subunit to the south and the ECN–4 subunit to the east. This subunit is also expected to provide demographic support of the overall population. WCN–2 is located in the watersheds of the Snohomish and Cedar/Sammamish rivers. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 79 percent of the area of WCN–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Unit 5: West Cascades Central (WCC)

This unit contains 1,353,045 ac (547,558 ha) and three subunits. This region consists of the midsection of the Western Cascades Section M242B, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994a, Section M242B), extending from Snoqualmie Pass in central Washington south to the Columbia River. It is similar to the Southern Washington Cascades Province of Franklin and Dyrness (1988, pp. 21–23). We separated this region from the northern section based on differences in spotted owl habitat due to relatively milder temperatures, lower elevations, and greater proportion of western hemlock/Douglas-fir forest and occurrence of noble fir (*A. procera*) to the south of Snoqualmie Pass. Because Douglas-fir dwarf mistletoe occurs rarely in this region, spotted owl nest sites are largely limited to defects in large trees, and occasionally nests of other raptors.

Subunit Descriptions—Unit 5

WCC–1. The WCC–1 subunit consists of approximately 384,797 ac (155,722 ha) in King, Pierce, Thurston, Lewis, Kittitas, and Yakima Counties, Washington, and comprises lands managed by the National Park Service, Forest Service, State of Washington, and private landowners. Of this subunit, 79,551 ac (32,193 ha) are managed as part of the Mount Rainier National Park as a Congressionally reserved or wilderness area under the NWFP and we propose to exclude these lands in the final critical habitat designation. The Forest Service manages 189,984 ac (76,884 ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; 35,175 ac (14,235 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 31,329 ac (12,678 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources manages 3,322 ac (1,345 ha) for multiple uses, including timber revenue production, water quality, recreation, and wildlife habitat. Private landowners manage 45,463 ac (18,398 ha) for various uses within the I–90 West, I–90 East, and Mineral Block SOSEAs, including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current

and past timber harvest, competition with barred owls, and stand conversion. This subunit is expected to provide demographic support of the overall population and to maintain demographic connectivity between the Cascade Range and the Olympic Peninsula in conjunction with subunit NCO–3. WCC–1 is located primarily in the watersheds of the Nisqually, Puyallup, White, Duwamish, and Green rivers, and also includes portions of the Cowlitz River watershed in the Mineral Block SOSEA. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP, the Cedar River Watershed HCP, the Plum Creek Timber Central Cascades HCP, the West Fork Timber HCP, and the Tacoma Water Green River Water Supply Operations and Watershed Protection HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 96 percent of the area of WCC–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCC–2. The WCC–2 subunit consists of approximately 403,978 ac (163,484 ha) in Pierce, Lewis, Cowlitz, Skamania, and Yakima Counties, Washington, and comprises lands managed by the National Park Service, Forest Service, State of Washington, and private landowners. Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Of this subunit, 44,453 ac (17,989 ha) are managed as part of the Mount Rainier National Park as a Congressionally reserved or wilderness area under the NWFP. The Forest Service manages 116,982 ac (47,341 ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; 78,191 ac (31,643 ha) as Congressionally reserved or wilderness areas; and 164,206 ac (66,452 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. Private landowners manage 195 ac (79 ha) for various uses within the Mineral Block SOSEA, including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current and past timber harvest and competition with barred owls. This subunit is expected to provide demographic support of the overall population. WCC–2 is located primarily in the Cowlitz River watersheds west of the Cascade Crest and the headwaters of the Naches River watershed east of the Crest. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP, the West Fork Timber HCP, and the Port Blakely Tree Farms L.P. (Morton Block) SHA, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement in the final critical habitat designation.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 96 percent of the area of WCC–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCC–3. The WCC–3 subunit consists of approximately 499,449 ac (202,120 ha) in Clark, Skamania, and Yakima Counties, Washington, and comprises lands managed by the Forest Service, the State of Washington, and private landowners. The Forest Service manages 286,220 ac (115,829 ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; 32,862 ac (13,299 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 125,488 ac (50,783 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources, manages 63,504 ac (21,652 ha) in the Siouxon and Columbia Gorge SOSEAs for multiple uses, including timber revenue production, water quality, recreation and wildlife habitat. Private landowners manage 1,746 ac (706 ha) for various uses within the Siouxon and Columbia Gorge SOSEAs, including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current and past timber harvest, competition with barred owls, and the Columbia River as an impediment to spotted owl dispersal. This subunit is expected to provide demographic support of the overall population and an opportunity for demographic exchange between the WCC Unit and the WCS Unit. WCC–3 is located primarily in the watersheds of the Lewis, Wind, and White Salmon rivers, and is bounded on the south by the Columbia River. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 96 percent of the area of WCC–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and

buffering from competition with the barred owl.

Unit 6: West Cascades South (WCS)

Unit 6 contains 1,624,900 ac (657,574 ha) and contains six subunits. This unit consists of the southern portion of the Western Cascades Section M242B, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994a, Section M242B), and extends from the Columbia River south to the North Umpqua River. We separated this region from the northern section due to its relatively milder temperatures, reduced summer precipitation due to the influence of the Willamette Valley to the west, lower elevations, and greater proportion of western hemlock/Douglas-fir forest. The southern portion of this region exhibits a gradient between Douglas-fir/western hemlock and increasing Klamath-like vegetation (mixed conifer/evergreen hardwoods) which continues across the Umpqua divide area. The southern boundary of this region is novel and reflects a transition to mixed-conifer forest (Franklin and Dyrness 1988, pp. 23–24, 137–143). The importance of Douglas-fir dwarf mistletoe increases to the south in this region, but most spotted owl nest sites in defective large trees, and occasionally nests of other raptors.

Subunit Descriptions—Unit 6

WCS–1. The WCS–1 subunit consists of approximately 177,738 ac (71,928 ha) in Multnomah, Hood River, and Clackamas Counties, Oregon, and comprises only Federal lands managed by the BLM and the Forest Service under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south and east-west connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 88 percent of the area of WCS–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCS–2. The WCS–2 subunit consists of approximately 195,833 ac (79,251 ha) in Clackamas, Marion, and Wasco Counties, Oregon, and comprises only Federal lands managed by the BLM and the Forest Service under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 82 percent of the area of WCS–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011 p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCS–3. The WCS–3 subunit consists of approximately 374,061 ac (151,377 ha) in Clackamas, Marion, Linn, and Lane Counties, Oregon, and comprises lands managed by the State of Oregon, the BLM, and the Forest Service. Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Of this subunit, 183 ac (74 ha) are managed by the State of Oregon primarily for recreation (Oregon Administrative Rules, ch. 736, entire). The remaining 373,878 ac (151,303 ha) are Federal lands managed as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 85 percent of the area of WCS–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCS–4. The WCS–4 subunit consists of approximately 453,146 ac (183,382 ha) in Lane and Douglas Counties, Oregon, and comprises only Federal lands managed by the BLM and the Forest Service under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 86 percent of the area of WCS–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCS–5. The WCS–5 subunit consists of approximately 370,253 ac (149,836 ha) in Lane and Douglas Counties, Oregon, and comprises only Federal lands managed by the Forest Service under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south and east-west connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 83 percent of the area of WCS–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

WCS–6. The WCS–6 subunit consists of approximately 104,650 ac (42,351 ha) in Lane, Klamath and Douglas Counties, Oregon, and is managed by the BLM and the Forest Service as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest and competition with barred owls. This subunit is expected to function primarily for east-west connectivity between subunits and CHUs, and between the Oregon coast and the western Cascades.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 97 percent of the area of WCS–6 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Unit 7: East Cascades North (ECN)

Unit 7 contains 1,919,469 ac (776,781 ha) and nine subunits. This unit consists of the eastern slopes of the Cascade range, extending from the Canadian border south to the Deschutes National Forest near Bend, OR. Terrain in portions of this region is glaciated and steeply dissected. This region is characterized by a continental climate (cold, snowy winters and dry summers) and a high-frequency/low-mixed severity fire regime. Increased precipitation from marine air passing east through Snoqualmie Pass and the Columbia River has resulted in an increase of moist forest conditions in this region (Hessburg *et al.* 2000b, p. 165). Forest composition, particularly the presence of grand fir and western larch, distinguishes this modeling region from the southern section of the eastern Cascades. While ponderosa pine forest dominates lower and middle elevations in both this and the southern section, the northern section supports grand fir and Douglas-fir habitat at middle elevations. Dwarf mistletoe provides an important component of nesting habitat, enabling spotted owls to nest within stands of relatively younger, small trees.

Subunit Descriptions—Unit 7

ECN–1. The ECN–1 subunit consists of approximately 135,108 ac (54,676 ha) in Whatcom, Skagit, and Okanogan Counties, Washington, and comprises lands managed by the National Park Service and Forest Service. Of this subunit, 2,634 ac (1,066 ha) are managed as part of the North Cascades National Park and Recreation Area as a Congressionally reserved or wilderness area under the NWFP and we propose to exclude these lands from the final critical habitat designation. The Forest Service manages 78,681 ac (31,841 ha) as Late-successional Reserves to maintain functional, interactive, late-successional and old-growth forest ecosystems; 31,323 ac (12,676 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 22,480 ac (9,097 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. Threats in this subunit include current and past timber harvest; competition with barred owls; removal or modification of habitat by forest fires, insects, and diseases; steep topography with high-elevation ridges that separate relatively small, linear, strips of suitable habitat in valley bottoms; and location at the northeastern limit of the range of the subspecies. This subunit is expected to provide demographic support of the overall population and maintain the subspecies distribution in the northeastern portion of its range. ECN–1 is located primarily in the watershed of the Methow River and includes a small portion of the upper Skagit River watershed. It is bounded on the north by the international boundary with British Columbia, Canada.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 41 percent of the area of ECN–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and

occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–2. The ECN–2 subunit consists of approximately 164,310 ac (66,494 ha) in Chelan County, Washington, and comprises lands managed by the National Park Service, and Forest Service. Of this subunit, 48,922 ac (19,798 ha) are managed as part of the North Cascades National Park and Recreation Area as a Congressionally reserved or wilderness area under the NWFP and we propose to exclude these lands in the final critical habitat designation. The Forest Service manages 41,999 ac (16,997 ha) as Late-successional Reserves to maintain functional, interactive, late-successional and old-growth forest ecosystems; 55,618 ac (22,508 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 17,771 ac (7,192 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. Threats in this subunit include current and past timber harvest; competition with barred owls; steep topography with high-elevation ridges that separate relatively small, linear, strips of suitable habitat in valley bottoms; the combination of Lake Chelan and the Sawtooth Mountains acting as a barrier to dispersal; and removal or modification of habitat by forest fires, insects, and diseases. This subunit is expected to provide demographic support of the overall population. ECN–2 is located primarily in the watersheds of the Chelan and Entiat rivers.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 34 percent of the area of ECN–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–3. The ECN–3 subunit consists of approximately 423,801 ac (171,506 ha) in Chelan County, Washington, and comprises lands managed by the Forest Service, the State of Washington, and private landowners. The Forest Service manages 186,478 ac (75,465 ha) as Late-successional Reserves to maintain functional, interactive, late-successional and old-growth forest ecosystems; 97,131 ac (39,307 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 112,267 ac (45,433 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources, manages 5,819 ac (2,355 ha) in the Entiat and North Blewett SOSEAs for multiple uses, including timber revenue production, water quality, recreation, and wildlife habitat. Private landowners manage 22,575 ac (9,136 ha) for various uses within the Entiat and North Blewett SOSEAs, including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current and past timber harvest, competition with barred owls, and removal or modification of habitat by forest fires, insects, and diseases. This subunit is expected to provide demographic support of the overall population. ECN–3 is located primarily in the watershed of the Wenatchee River. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP and the Scofield Corporation HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 71 percent of the area of ECN–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–4. The ECN–4 subunit consists of approximately 303,494 ac (123,224 ha) in Kittitas County, Washington, and comprises lands managed by the Forest Service, the State of Washington, and private landowners. The Forest Service manages 99,040 ac (40,080 ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; 35,507 ac (14,369 ha) as Congressionally reserved or wilderness areas (propose to exclude) and 93,283 ac (37,750 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources, manages 9,781 ac (3,958 ha) mostly in the I–90 East SOSEA for multiple uses, including timber revenue production, water quality, recreation, and wildlife habitat. Private landowners manage 66,814 ac (27,039 ha) for various uses within the I–90 East SOSEA, including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current and past timber harvest, competition with barred owls, and removal or modification of habitat by forest fires, insects, and diseases. This subunit is expected to provide demographic support of the overall population. This subunit also has a key role in maintaining connectivity between spotted owl populations, both north to south in the East Cascades North Unit and west to east between the West and East Cascades units. This role

is shared with the WCN–2 subunit and the WCC–1 subunit to the west. ECN–4 is located primarily in the Upper Yakima River watershed. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP and the Plum Creek Timber Central Cascades HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 78 percent of the area of ECN–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–5. The ECN–5 subunit consists of approximately 300,384 ac (121,561 ha) in Kittitas and Yakima Counties, Washington, and comprises lands managed by the Forest Service, the State of Washington, and private landowners. The Forest Service manages 115,583 ac (46,775 ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; 95,351 ac (38,587 ha) as Congressionally reserved or wilderness areas (propose to exclude); and 83,692 ac (33,869 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources, manages 3,400 ac (1,376 ha) mostly in the I–90 East SOSEA for multiple uses, including timber revenue production, water quality, recreation, and wildlife habitat. Private landowners manage 2,322 ac (940 ha) for various uses within the I–90 East SOSEA, including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current and past timber harvest, competition with barred owls, and removal or modification of habitat by forest fires, insects, and diseases. This subunit is expected to provide demographic support of the overall population. ECN–5 is located primarily in the watershed of the Naches River. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP and the Plum Creek Timber Central Cascades HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 85 percent of the area of ECN–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–6. The ECN–6 subunit consists of approximately 169,139 ac (68,448 ha) in Skamania, Yakima, and Klickitat Counties, Washington, and comprises lands managed by the Forest Service, the State of Washington, and private landowners. Of this subunit, 4,466 ac (1,807 ha) are managed as part of the Columbia River Gorge National Scenic Area as a Congressionally reserved area under the NWFP which we propose to exclude in the final critical habitat designation. The Forest Service manages 32,430 ac (13,124 ha) as Late-successional Reserves to maintain functional, interactive, late-successional, and old-growth forest ecosystems; and 49,338 ac (19,967 ha) under the Matrix land use allocation where multiple uses occur, including most timber harvest and other silvicultural activities. The State of Washington, primarily the Department of Natural Resources, manages 39,555 ac (16,007 ha), mostly in the White Salmon SOSEA for multiple uses, including timber revenue production, water quality, recreation, and wildlife habitat. Private landowners manage 43,392 ac (17,560 ha) for various uses within the White Salmon SOSEA, including maintenance of spotted owl habitat for demographic and dispersal support of habitat on Federal lands and will be considered for exclusion in the final designation. Threats in this subunit include current and past timber harvest, competition with barred owls, and the Columbia River as an impediment to spotted owl dispersal. This subunit is expected to provide demographic support of the overall population. ECN–6 is located primarily in the watersheds of the Klickitat and White Salmon rivers, and is bounded on the south by the Columbia River. In this subunit, we propose to exclude lands covered under the Washington Department of Natural Resources State Lands HCP.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 88 percent of the area of ECN–6 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–7. The ECN–7 subunit consists of approximately 174,949 ac (70,799 ha) in Hood River and Wasco Counties, Oregon, and comprises only Federal lands managed by the Forest Service under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic

support to the overall population, as well as north-south and east-west connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that nearly 100 percent of the area of ECN–7 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–8. The ECN–8 subunit consists of approximately 157,877 ac (63,891 ha) in Jefferson and Deschutes Counties, Oregon, of Federal lands managed by the Forest Service under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 61 percent of the area of ECN–8 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECN–9. The ECN–9 subunit consists of approximately 158,126 ac (63,991 ha) in Deschutes and Klamath Counties, Oregon, and comprises only Federal lands managed by the Forest Service under the NWFP (USDA and USDI 1994). Congressionally reserved natural areas in Federal ownership are proposed for exclusion. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 45 percent of the area of ECN–9 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Unit 8: East Cascades South (ECS)

Unit 8 contains 526,815 ac (213,195 ha) and three subunits. This unit incorporates the Southern Cascades Ecological Section M261D, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994c, Section M261D) and the eastern slopes of the Cascades from the Crescent Ranger District of the Deschutes National Forest south to the Shasta area. Topography is gentler and less dissected than the glaciated northern section of the eastern Cascades. A large expanse of recent volcanic soils (pumice region) (Franklin and Dyrness 1988, pp. 25–26), large areas of lodgepole pine, and increasing presence of red fir (*A. magnifica*) and white fir (and decreasing grand fir) along a south-trending gradient further supported separation of this region from the northern portion of the eastern Cascades. This region is characterized by a continental climate (cold, snowy winters and dry summers) and a high-frequency/low-mixed severity fire regime. Ponderosa pine is a dominant forest type at mid-to-lower elevations, with a narrow band of Douglas-fir and white fir at middle elevations providing the majority of spotted owl habitat. Dwarf mistletoe provides an important component of nesting habitat, enabling spotted owls to nest within stands of relatively younger, smaller trees.

Subunit Descriptions—Unit 8

ECS–1. The ECS–1 subunit consists of approximately 192,523 ac (77,911 ha) in Klamath, Jackson, and Douglas Counties, Oregon, and comprises lands managed by the BLM, the National Park Service, and the Forest Service. Of these acres 21,129 ac (8,550 ha) are under management of the National Park Service and are proposed for exclusion in the final critical habitat designation, while the remaining 170,394 ac (69,361 ha) are BLM and Forest Service lands managed as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south and east-west connectivity between subunits and CHUs. This subunit is adjacent to ECS–2 to the south.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 78 percent of the area of ECS–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger

forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECS–2. The ECS–2 subunit consists of approximately 90,012 ac (36,427 ha) in Klamath and Jackson Counties, Oregon, and Siskiyou County, California, all of which are Federal lands managed by the BLM and Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for north-south connectivity between subunits, but also for demographic support in this area of sparse Federal land and sparse high-quality nesting habitat.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 77 percent of the area of ECS–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ECS–3. The ECS–3 subunit consists of approximately 112,960 ac (45,713 ha) in Siskiyou County, California, all of which are Federal lands managed by the Forest Service per the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. The function of this subunit is to provide demographic support in this area of sparsely distributed high-quality habitat and Federal land, and to provide for population connectivity between subunits to the north and south.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 69 percent of the area of ECS–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider a large part of this subunit to have been occupied at the time of listing. There are some areas of younger forest in this subunit that may have been unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat in this subunit is especially important for providing essential connectivity between currently occupied areas to support the successful dispersal of spotted owls, and may also help to buffer spotted owls from competition with the barred owl.

Unit 9: Klamath West (KLW)

Unit 9 contains 1,290,687 ac (522,322 ha) and nine subunits. This unit consists of the western portion of the Klamath Mountains Ecological Section M261A, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994c, Section M261A). A long north-south trending system of mountains (particularly South Fork Mountain) creates a rainshadow effect that separates this region from more mesic conditions to the west. This region is characterized by very high climatic and vegetative diversity resulting from steep gradients of elevation, dissected topography, and the influence of marine air (relatively high potential precipitation). These conditions support a highly diverse mix of mesic forest communities such as Pacific Douglas-fir, Douglas-fir tanoak, and mixed evergreen forest interspersed with more xeric forest types. Overall, the distribution of tanoak is a dominant factor distinguishing the Western Klamath Region. Douglas-fir dwarf mistletoe is uncommon and seldom used for nesting platforms by spotted owls. The prey base of spotted owls within the Western Klamath is diverse, but dominated by woodrats and flying squirrels.

Subunit Descriptions—Unit 9

KLW–1. The KLW–1 subunit consists of approximately 156,075 ac (63,161 ha) in Douglas, Josephine, Curry, and Coos Counties, Oregon, and comprises lands managed by the State of Oregon and the BLM. Of this subunit 7,236 ac (2,928 ha) are managed by the State of Oregon for multiple uses including timber revenue production, recreation, and wildlife habitat according to the Southwest Oregon State Forests Management Plan (ODF 2010b, entire) and may be considered for exclusion in the final critical habitat designation. Federal lands comprise 148,837 ac (60,233 ha) and are managed as directed by the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support to the overall population and for north-south and east-west connectivity between subunits and CHUs. This subunit sits at the western edge of an important connectivity corridor between coastal Oregon and the western Cascades.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 96 percent of the area of KLW–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable

populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–2. The KLW–2 subunit consists of approximately 150,777 ac (61,017 ha) in Josephine, Curry, and Coos Counties, Oregon, and comprises lands managed by the Forest Service and the BLM as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support to the overall population and for north-south and east-west connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 71 percent of the area of KLW–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–3. The KLW–3 subunit consists of approximately 111,595 ac (45,161 ha) in Josephine, Curry, and Coos Counties, Oregon, and comprises lands managed by the Forest Service, the BLM and the State of Oregon. There are 110,356 ac (44,660 ha) of Federal lands managed as directed by the NWFP (USDA and USDI 1994, entire). The 837 ac (339 ha) of State of Oregon lands are managed according to the Southwest Oregon State Forests Management Plan (ODF 2010b, entire) and may be considered for exclusion for the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support to the overall population and for north-south connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 88 percent of the area of KLW–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–4. The KLW–4 subunit consists of approximately 155,811 ac (63,055 ha) in Josephine and Jackson Counties, Oregon, and Del Norte and Siskiyou Counties, California, and comprises lands managed by the Forest Service, the BLM, and the NPS that are managed as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support to the overall population and for north-south and east-west connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 95 percent of the area of KLW–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–5. The KLW–5 subunit consists of approximately 28,622 ac (11,583 ha) in Josephine County, Oregon, and Del Norte and Siskiyou Counties, California, all of which are Federal lands managed by the BLM and Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 98 percent of the area of KLW–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population

expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–6. The KLW–6 subunit consists of approximately 159,566 ac (64,574 ha) in Del Norte, Humboldt, and Siskiyou Counties, California, all of which are Federal lands managed by the Forest Service as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 91 percent of the area of KLW–6 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–7. The KLW–7 subunit consists of approximately 302,139 ac (122,271 ha) in Del Norte, Humboldt, and Siskiyou Counties, California, all of which are Federal lands managed by the BLM and Forest Service as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 91 percent of the area of KLW–7 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–8. The KLW–8 subunit consists of approximately 118,671 ac (48,024 ha) in Siskiyou and Trinity Counties, California, all of which are Federal lands managed by the BLM and Forest Service as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 85 percent of the area of KLW–8 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLW–9. The KLW–9 subunit consists of approximately 190,140 ac (76,949 ha) in Humboldt and Trinity Counties, California, all of which are Federal lands managed by the Forest Service as directed by the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 89 percent of the area of KLW–9 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Unit 10: Klamath East (KLE)

Unit 10 contains 1,111,790 ac (449,926 ha) and seven subunits. This unit consists of the eastern portion of the Klamath Mountains Ecological Section M261A, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994c, Section M261A), and portions of the Southern Cascades Ecological Section M261D in Oregon. This region is characterized by a Mediterranean climate, greatly reduced influence of marine air, and

steep, dissected terrain. Franklin and Dyrness (1988, pp. 137–149) differentiate the mixed-conifer forest occurring on the ''Cascade side of the Klamath from the more mesic mixed evergreen forests on the western portion (Siskiyou Mountains),'' and Kuchler (1977) separates out the eastern Klamath based on increased occurrence of ponderosa pine. The mixed-conifer/evergreen hardwood forest types typical of the Klamath region extend into the southern Cascades in the vicinity of Roseburg and the North Umpqua River, where they grade into the western hemlock forest typical of the Cascades. High summer temperatures and a mosaic of open forest conditions and Oregon white oak (*Q. garryana*) woodlands act to influence spotted owl distribution in this region. Spotted owls occur at elevations up to 1,768 m. Dwarf mistletoe provides an important component of nesting habitat, enabling spotted owls to nest within stands of relatively younger, small trees.

Subunit Descriptions—Unit 10

KLE–1. The KLE–1 subunit consists of approximately 262,810 ac (106,355 ha) in Jackson and Douglas Counties, Oregon, and comprises Federal lands managed by the Forest Service and the BLM under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support to the overall population, as well as north-south and east-west connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 84 percent of the area of KLE–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLE–2. The KLE–2 subunit consists of approximately 110,477 ac (44,709ha) in Josephine and Douglas Counties, Oregon, and comprises Federal lands managed by the Forest Service and the BLM under the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for east-west connectivity between subunits and CHUs, but also for demographic support. This subunit facilitates spotted owl movements between the western Cascades and coastal Oregon and the Klamath Mountains.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 92 percent of the area of KLE–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLE–3. The KLE–3 subunit consists of approximately 110,484 ac (44,711 ha) in Jackson, Josephine, and Douglas Counties, Oregon, and comprises Federal lands managed by the Forest Service and the BLM under the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for east-west connectivity between subunits and CHUs, but also for demographic support. This subunit facilitates spotted owl movements between the western Cascades and coastal Oregon and the Klamath Mountains.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 97 percent of the area of KLE–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLE–4. The KLE–4 subunit consists of approximately 307,339 ac (124,376 ha) in Jackson, Klamath, and Douglas Counties, Oregon, and comprises Federal lands managed by the NPS, Forest Service, and the BLM under the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for east-west connectivity between subunits and CHUs, but also for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 81 percent of the area of KLE–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and

occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLE–5. The KLE–5 subunit consists of approximately 37,646 ac (15,325,ha) in Jackson County, Oregon, and comprises lands managed by the BLM and the State of Oregon. The 37,606 ac (15,219 ha) of BLM land are managed per the NWFP (USDA and USDI 1994, entire) while the State of Oregon lands are managed under the Southwest Oregon State Forests Management Plan (ODF 2010b, entire) and may be considered for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for north-south connectivity between subunits, but also for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 86 percent of the area of KLE–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLE–6. The KLE–6 subunit consists of approximately 167,089 ac (67,619 ha) in Jackson County, Oregon, and Siskiyou County, California, all of which are Federal lands managed by the BLM and Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for north-south connectivity between subunits, but also for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 97 percent of the area of KLE–6 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

KLE–7. The KLE–7 subunit consists of approximately 73,749 ac (29,845 ha) in Siskiyou County, California, all of which are Federal lands managed by the BLM and Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function for demographic support and also for connectivity across the landscape.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 96 percent of the area of KLE–7 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Unit 11: Interior California Coast (ICC)

Unit 11 contains 1,276,450 ac (516,537 ha) and eight subunits. This unit consists of the Northern California Coast Ranges ecological Section M261B, based on section descriptions of forest types from Ecological Subregions of the United States (McNab and Avers 1994c, Section M261B), and differs markedly from the adjacent redwood coast region. Marine air moderates winter climate, but precipitation is limited by rainshadow effects from steep elevational gradients (100 to 2,400 m.) along a series of north-south trending mountain ridges. Due to the influence of the adjacent Central Valley, summer temperatures in the interior portions of this region are among the highest within the spotted owl's range. Forest communities tend to be relatively dry mixed-conifer, blue and Oregon white oak, and the Douglas-fir tanoak series. Spotted owl habitat within this region is poorly known; there are no DSAs, and few studies have been conducted here. Spotted owl habitat data obtained during this project suggests that some spotted owls occupy steep canyons dominated by live oak and Douglas-fir; the distribution of dense conifer habitats is limited to higher elevations on the Mendocino National Forest.

Subunit Descriptions—Unit 11

ICC–1. The ICC–1 subunit consists of approximately 352,275 ac (142,561 ha) in Humboldt, Trinity, Shasta, and Tehama Counties, California, all of which are Federal lands managed by the BLM and the Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support, but also for connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 97 percent of the area of ICC–1 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ICC–2. The ICC–2 subunit consists of approximately 224,779 ac (90,956 ha) in Humboldt and Trinity Counties, California, all of which are Federal lands managed by the BLM and the Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support, but also for connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 98 percent of the area of ICC–2 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ICC–3. The ICC–3 subunit consists of approximately 257,668 ac (104,274 ha) in Trinity, Tehama, and Mendocino Counties, California, all of which are Federal lands managed by the BLM and the Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support, but also for north-south connectivity between subunits.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 89 percent of the area of ICC–3 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ICC–4. The ICC–4 subunit consists of approximately 173,199 ac (70,091 ha) in Mendocino, Glenn, and Colusa Counties, California, all of which are Federal lands managed by the BLM and Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 93 percent of the area of ICC–4 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ICC–5. The ICC–5 subunit consists of approximately 47,243 ac (19,119 ha) in Lake and Mendocino Counties, California, all of which are Federal lands managed by the Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat

designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function primarily for demographic support, but also for connectivity between subunits and CHUs.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 78 percent of the area of ICC–5 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ICC–6. The ICC–6 subunit consists of approximately 51,519 ac (20,849 ha) in Napa and Sonoma Counties, California. It is comprised largely of privately owned lands, which may be considered for exclusion from the final designation, along with some State and Federal lands. Residential subdivisions, commercially-zoned lands, and individually-owned parcels less than 40 acres that may have been included in the mapped area are not being proposed as critical habitat. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. The expected function of this subunit is to provide demographic support to an isolated population.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 90 percent of the area of ICC–6 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ICC–7. The ICC–7 subunit consists of approximately 132,386 ac (53,575 ha) in Trinity and Shasta Counties, California, all of which are Federal lands managed by the BLM, NPS, and the Forest Service per the NWFP (USDA and USDI 1994, entire). Congressionally reserved natural areas in Federal ownership are proposed for exclusion in the final critical habitat designation. Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function both for demographic support and for east-west connectivity between subunits in an area of sparse Federal ownership.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 73 percent of the area of ICC–7 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

ICC–8. The ICC–8 subunit consists of approximately 73,492 ac (29,741 ha) in Siskiyou and Shasta Counties, California, all of which are Federal lands managed by the BLM and the Forest Service per the NWFP (USDA and USDI 1994, entire). Special management considerations or protection are required in this subunit to address threats from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. This subunit is expected to function both for demographic support and for connectivity between subunits in an area of sparse Federal ownership.

Our evaluation of sites known to be occupied at the time of listing indicate that approximately 84 percent of the area of ICC–8 was covered by verified spotted owl home ranges at the time of listing. When combined with likely occupancy of suitable habitat and occupancy by non-territorial owls and dispersing subadults, we consider this subunit to have been largely occupied at the time of listing. In addition, there may be some smaller areas of younger forest within the habitat mosaic of this subunit that were unoccupied at the time of listing. We have determined that all of the unoccupied and likely occupied areas in this subunit are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of spotted owl habitat is necessary to provide for viable populations of spotted owls over the long term by providing for population expansion, successful dispersal, and buffering from competition with the barred owl.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with the Service. Examples of actions that are subject to the section 7 consultation process are actions on State, Indian, 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, Indian, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Determinations of Adverse Effects and Application of the ''Adverse Modification'' Standard

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Section 7(a)(2) of the Act requires Federal agencies to ensure their actions do not jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. The key factor involved in the destruction/adverse modification determination for a proposed Federal agency action is whether the affected critical habitat would continue to serve its intended conservation role for the species with implementation of the proposed action after taking into account any anticipated cumulative effects (USFWS 2004, *in litt.* entire). Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the northern spotted owl. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

In general, there are five possible outcomes in terms of how proposed Federal actions may affect the PCEs or physical and biological features of northern spotted owl critical habitat: (1) No effect; (2) wholly beneficial effects (e.g., improve habitat condition); (3) both short-term adverse effects and long-term beneficial effects; (4) insignificant or discountable adverse effects; or (5) wholly adverse effects. Actions with no effect on the PCEs and physical and biological features of northern spotted owl critical habitat do not require section 7 consultation, although such actions may still have adverse or beneficial effects on the species itself that require consultation. Actions with effects to the PCEs or physical and biological features of northern spotted owl critical habitat that are discountable, insignificant, or wholly beneficial are considered as not likely to adversely affect critical habitat and do not require formal consultation if the Service concurs in writing with that Federal action agency determination. Actions that are likely to adversely affect the physical or biological features of northern spotted owl critical habitat require formal consultation and the preparation of a Biological Opinion by the Service. The Biological Opinion sets forth the basis for our section 7(a)(2) determination as to whether the proposed Federal action is likely to destroy or adversely modify northern spotted owl critical habitat.

Activities that may destroy or adversely modify critical habitat are those that alter the essential physical or biological features of the critical habitat to an extent that appreciably reduces the conservation value of the critical habitat for the listed species. As discussed above, the conservation role or value of northern spotted owl critical habitat is to adequately support the life-history needs of the species to the extent that well-distributed and inter-connected northern spotted owl nesting populations at habitat carrying capacity levels are likely to persist within properly functioning ecosystems at the critical habitat unit and range-wide scales.

In areas occupied at the time of listing, proposed Federal actions that may affect the essential physical or biological features of northern spotted

owl critical habitat will trigger the consultation requirements under section 7 of the Act and compliance with the section 7(a)(2) standard described above. Similarly, in areas that may have been unoccupied at the time of listing, proposed Federal actions that may affect the habitat qualities that served as the basis for the determination that the area is essential to the conservation of the species will trigger these requirements as well. The consultation process evaluates how a proposed action is likely to affect the capability of the critical habitat to support northern spotted owl nesting, roosting, foraging, or dispersal by considering the scales at which the life-history requirements of the northern spotted owl are based regardless of the species' presence or absence. For an action that may affect critical habitat, the next step is to determine whether it is likely to adversely affect critical habitat. For example, where a project is designed to reduce fuels such that the effect of wildfires will be reduced but will also reduce foraging opportunities within treatment areas, established interagency consultation teams should determine whether the proposed project has more than an insignificant impact on the foraging PCEs for northern spotted owls. A localized reduction in foraging habitat within a stand may have such a small impact on foraging PCEs within the stand that a not likely to adversely affect determination is appropriate. Similarly, a hazard tree removal project in a stand with many suitable nest trees may have such a minimal reduction in nesting PCEs of that stand that the effect to nesting habitat is negligible.

Scale and context are especially important in evaluating the potential effects of forest management on northern spotted owl habitat. The degree to which various forest management activities are likely to affect the capability of the critical habitat to support northern spotted owl nesting, roosting, foraging, or dispersal will vary depending on factors such as the scope and location of the action and the quantity of the critical habitat affected. In addition, the evaluation of actions that may affect critical habitat for the northern spotted owl for purposes of completing the section 7(a)(2) analysis for the destruction or adverse modification determination should consider the effects of the action on the factors that were the basis for determining the area to meet the definition of critical habitat. Thus when conducting section 7 consultations, the factors to be considered may include, but are not limited to:

- The extent of the proposed action, including its temporal and spatial scale, relative to the critical habitat subunit within which it occurs.
- The specific purpose for which that subunit was identified and designated as critical habitat.
- The impact of the proposed action on the subunit's likelihood of serving its intended conservation function or purpose.
- The overall consistency of the proposed action with the intent of the recovery plan or other landscape-level conservation plans.

In general, we would anticipate that management actions that are consistent with the overall purpose for which a critical habitat unit was designated would be determined as not likely to adversely affect or destroy or adversely modify critical habitat. Such actions include activities whose intent is to restore ecological processes or long-term forest health to forested landscapes that contain spotted owl habitat, such as those actions described in the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011) and elsewhere in this document.

Section 7 consultations need to consider the temporal and spatial scale of impacts a proposed action may have on the PCEs or essential habitat qualities associated with the affected critical habitat subunit(s). Actions that have a relatively short-lived temporal impact will likely not adversely affect the critical habitat subunit's role and function in conserving spotted owls and on that basis generally warrant a not likely to adversely affect or a no-destruction or adverse modification conclusion under formal consultation. Likewise, proposed actions that are small in spatial scale relative to the subunit's size and overall habitat condition are also potentially not likely to adversely affect the critical habitat's role and function. As a general rule of thumb, when conducting section 7 consultation, we recommend consideration of a scale that is relevant to the needs and biology of the spotted owl. As outlined in Appendix C of the Revised Recovery Plan (USFWS 2011, p. C–15), spotted owls select nest sites (their most specific habitat requirement) based on conditions that exist at a variety of spatial scales beyond the nest site, most notably the ''core area'' surrounding the nest site. While these scales vary by study and location, we believe an area roughly 500 ac (200 ha) in size is a reasonable core area metric for land managers to consider when assessing effects on critical habitat. This 500-ac (200-ha) metric is consistent with the methodology used to construct the habitat model described in Appendix C of the Revised Recovery Plan and for which areas were evaluated for possible designation. We would anticipate that in most cases, restoration and thinning actions (see Special Management Actions and Considerations) at or below this size will likely not adversely affect a given critical habitat subunit; however, such a determination would have to be made on a case-by-case basis, after careful consideration of the specific conditions of the proposed action.

The Service believes that this 500-ac (200-ha) scale is a reasonable extent for evaluating potential effects; the Service would then evaluate whether there is a reasonable certainty that the proposed action would result in a measurable change in the subunit's ability to provide the functions for which it was designated. Caveats to this generalization include the need to consider the subunit's baseline condition and the potential for cumulative effects within the subunit, which can accrue both spatially and temporally. The Service invites public comment on this approach to effects determinations for the northern spotted owl.

Actions resulting in wholly beneficial effects include those that actively promote the development or improve the functionality of critical habitat for the northern spotted owl without causing adverse effects to the essential physical or biological features. Such actions might involve variable-density thinning in forest stands that do not currently support nesting, roosting, or foraging habitat for the northern spotted owl to speed the development of these types of habitats while maintaining dispersal habitat function. Thinning or other treatments in young plantations that do not provide even dispersal habitat (but are capable of providing habitat) would also fall into this effect category, where these actions are specifically designed to accelerate the development of northern spotted owl habitat. Some of these actions may affect critical habitat and would, therefore, require consultation under section 7 of the Act. But because they may be not likely to adversely affect critical habitat, the consultation may be completed informally through the Service's issuance of a concurrence letter as discussed above.

Likewise, if the adverse effects of a proposed Federal action on the physical or biological features of northern spotted owl critical habitat at the 500-ac (200-ha) scale are expected to be discountable (extremely unlikely to occur) or insignificant, that action is

considered not likely to adversely affect northern spotted owl critical habitat. In such cases, the Act's section 7 consultation requirements can be satisfied through the informal concurrence process described above. Examples of such actions may include: Pre-commercial or commercial thinning that does not delay the development of essential physical or biological features; fuel-reduction treatments that have a negligible effect on northern spotted owl foraging habitat within the stand; and the removal of hazard trees where the removal has an insignificant effect on the capability of the stand to provide northern spotted owl nesting opportunities.

Some proposed Federal forest management activities may have short-term adverse effects and long-term beneficial effects on the physical or biological features of northern spotted owl critical habitat. The Revised Recovery Plan for the Northern Spotted Owl anticipates that land managers will actively manage portions of both moist and dry forests to improve stand conditions and forest resiliency, which should benefit the long-term recovery of the northern spotted owl (USFWS 2011, p. III–11). For example, variable thinning in single-story, uniform forest stands to promote the development of multistory structure and nest trees may result in short-term adverse impacts to the habitat's current capability to support owl dispersal and some foraging, but have long-term benefits by creating higher quality habitat that will better support territorial pairs of northern spotted owls. Such activities would have less impact in areas where foraging and dispersal habitat is not limiting. Even though they may have long term beneficial effects, if they have short-term adverse effects, such actions may adversely affect critical habitat and would require formal consultation under section 7 of the Act. For efficiency, such actions could be evaluated under section 7 programmatically at the landscape scale (e.g., National Forest or BLM District).

Habitat conditions in moist/wet and dry/fire-prone forests within the range of the northern spotted owl vary widely as do the types of management activities designed to accelerate or enhance the development of northern spotted owl habitat. ''Wet'' and ''dry'' are ends of a spectrum, not distinct categories that adequately describe the full range of forest types within the range of the northern spotted owl. Because these categories are broad, and conditions on the ground are more variable, land managers and cooperators should have the expectation that multiple forest types may be involved and similar projects in different forest types may not always lead to the same effect determination for purposes of compliance with section 7 of the Act.

Within dry forests, the Revised Recovery Plan emphasizes active forest management that could meet overlapping goals of northern spotted owl conservation, climate change response, and restoration of dry forest ecological structure, composition and process, including wildfire and other disturbances (USFWS 2011, pp. III–20). For the rest of the northern spotted owl's range that is not fire-prone, the Revised Recovery Plan emphasizes habitat management that accelerates the development of future habitat, restores larger habitat blocks, and reduces habitat fragmentation. The following discussion describes the type of management approaches that would be consistent with the revised recovery plan in the West Cascades/Coast Ranges of Oregon and Washington, East Cascades, and the Redwood Coast zones, and a discussion of possible corresponding effect determinations for activities implementing these approaches for purposes of analyzing effects to critical habitat under section 7 of the Act. The Klamath and Northern California Interior Coast Ranges regions contain conditions similar to the three regions discussed below, and similar management approaches would be consistent with the recovery needs of the owl.

West Cascades/Coast Ranges of Oregon and Washington

The primary goal of the Revised Recovery Plan for this portion of the northern spotted owl's range is to conserve stands that support northern spotted owl occupancy or contain high-value northern spotted owl habitat (USFWS 2011, p. III–17). Silvicultural treatments are generally not needed to accomplish this goal. However, there is a significant amount of younger forest that occurs between and around the older stands where silvicultural treatments may accelerate the development of these stands into future northern spotted owl nesting habitat, even if doing so temporarily degrades existing dispersal habitat, as recommended in Recovery Action 6 (USFWS 2011, p. III–19). The Revised Recovery Plan encourages silviculture designed to develop late-successional structural complexity and to promote resilience (USFWS 2011, pp. III–17 to III–19). Restoration or ecological prescriptions can help uniform stands of poor quality develop more quickly into northern spotted owl habitat and provide resiliency in the face of potential climate change impacts in the future. Targeted vegetation treatments could simultaneously increase canopy and age-class diversity, putting those stands on a more efficient trajectory towards nesting and roosting habitat while reducing fuel loads. Introducing varying levels of spatial heterogeneity, both vertically and horizontally, into forest ecosystems can contribute to both of the goals stated above.

While these treatments would be intended to benefit the development of northern spotted owl habitat over time, they may have short-term adverse effects but are not expected to adversely modify the role and function of critical habitat. Additional information about ecological forestry activities in moist forests can be found in the Revised Recovery Plan under *Spotted Owls and Ecological Forestry* (USFWS 2011, p. III–11) and *Habitat Management in Moist Forests* (USFWS 2011, p. III–17).

Similarly, land managers should consider what areas of forest land might be appropriate to create or restore complex early seral forest habitat (USFWS 2011, p. III–14). Ideally, such actions should consist of relatively small patches targeted to younger, mid-seral forest stands that do not cause reductions in higher quality spotted owl habitat, and they should be planned in such a way that their net occurrence on the regional landscape is consistent with ecosystem-based planning targets (e.g., Spies *et al.* 2007a, entire) to provide the physical or biological features that are essential to the conservation of the northern spotted owl. As an example, targeted variable retention harvest in moist forests should be considered where the conservation of complex early seral forest habitat is a localized goal within spotted owl critical habitat. Some researchers have concluded that a focus on older forest conservation on Federal lands in the Pacific Northwest during the last 20 years is leading to a significant reduction in early seral habitat that is important to many species (Hagar 2007, p. 109; Spies *et al.* 2007b, p. 63; Betts *et al.* 2010, p. 2117). Traditional clearcutting on nearby private timber lands does not usually mimic natural disturbance or create viable early seral communities that grow into high-quality habitat (Franklin *et al.* 2002, p. 419; Swanson *et al.* 2010, p. 8). In recent years, variable retention harvest has been increasingly utilized as a way to reconcile the often competing goals of commercial timber production and biodiversity conservation (Carey 2003, p. 128; Rosenvald and Lohmus 2008, p. 2; Aubry *et al.* 2009, p. 399; Baker

2011, entire; Ellis and Betts 2011, p. 1372). It is appropriate to consider vegetation management actions within critical habitat to restore or encourage early seral restoration where such habitat is underrepresented at the landscape ecosystem level and the goal is to conserve landscape and biological diversity (Betts *et al.* 2010, pp. 2126–2127; Messier *et al.* 2012, p. 69). Such actions may adversely affect critical habitat, but they are not expected to adversely modify the role and function of critical habitat at the watershed or larger landscape scale (i.e., subunit or unit).

East Cascades

The Revised Recovery Plan recommends that the dynamic, fire-prone portion of the northern spotted owl's range be actively managed to conserve northern spotted owls, but also address climate change and restore dry forest ecological structure, composition, and processes (e.g., wildfire) to provide for the long-term conservation of the species and its habitat in a dynamic ecosystem (USFWS 2011, pp, III–13, III–20). To do this, management actions will need to be implemented that balance short-term adverse effects with long-term beneficial effects. In some cases, formal consultation on the effects of dry forest management activities on northern spotted owl critical habitat is likely to occur; in other cases, there may be no adverse effects and consultation can be concluded informally.

Management in dry forests should increase the likelihood that northern spotted owl habitat will remain on the landscape longer and develop as part of the dynamic fire- and disturbance-adapted community. Several management approaches can be described for these systems. The first is to maintain adequate northern spotted owl habitat in the near term to allow owls to persist on the landscape in the face of threats from barred owl expansion and habitat alterations from fire and other disturbances. The next is to restore landscapes that are resilient to fire and other disturbances, including those projected to occur with climate change. This will require more than reducing fuels and thinning trees to promote low-severity fires; management will need to develop ''more natural patterns and patch size distributions of forest structure, composition, fuels, and fire regime area'' (Hessburg *et al.* 2007, p. 21).

Our prime objective for vegetation management activities within northern spotted owl critical habitat is to maintain adequate amounts of nesting, roosting, foraging or dispersal habitat where it currently exists and to restore degraded habitat where it is essential to the owl and can be best sustained on the landscape as recommended in the Revised Recovery Plan (USFWS 2011, Section III). Successfully accomplishing these objectives can be facilitated by spatially and temporally explicit landscape assessments that identify areas valuable for northern spotted owl conservation and recovery, as well as areas important for process restoration (e.g., Prather *et al.* 2008, p. 149). Such assessments could answer questions which are frequently asked about proposed forest management activities, namely ''why here?'' and ''why now?'' Providing well-reasoned responses to these questions becomes especially important when restoration activities degrade or remove existing northern spotted owl habitat. By scaling up conservation and restoration planning from the stand to the landscape level, many apparent conflicts may disappear because management actions can be prioritized and spatially partitioned (Prather *et al.* 2008, p. 149; Rieman *et al.* 2010, p. 464). For example, portions of the landscape can be identified where there may be no conflict between objectives, and where relatively aggressive approaches to ecosystem restoration can occur without placing listed species at substantial risk (Prather *et al.* 2008, pp. 147–149; Gaines *et al.* 2010, pp. 2049–2050). Conflicts between objectives will remain in some locations, for example in places where removing younger, shade-intolerant conifers to reduce competition with larger, legacy conifers may result in a substantial decrease in canopy cover that translates into a reduction in northern spotted owl habitat quality. However, when this sort of treatment is well designed, strategically located, and justified within a landscape approach to treatments, it is easier to assess its effectiveness in meeting both owl conservation and forest restoration needs.

Landscape assessments developed at the scale of entire National Forests, Ranger Districts, or BLM Districts have the broad perspective that can improve our ability to estimate effects of our management activities on the function of critical habitat and better identify and prioritize treatment areas and the actions that will restore landscapes while conserving northern spotted owl habitat. The Okanogan-Wenatchee National Forest has developed a landscape evaluation process as part of their forest restoration strategy (USDA 2010, pp. 36–52) that can serve as an example other administrative units can refer to when developing their own assessment approaches. We suggest that the value of such assessments in guiding vegetation management within critical habitat can be enhanced by spatially identifying locations where restoration objectives and northern spotted owl habitat objectives converge, are in conflict, or simply are not an issue. We suggest the following approach for the East Cascades:

(1) Spatially identify and map:

a. Existing northern spotted owl habitat and northern spotted owl nesting sites.

b. Places on the landscape where northern spotted owl habitat is expected to be retained longer on the landscape in the face of disturbance activities such as fire and insect outbreaks.

c. Places on the landscape where key ecosystem structures and processes are at risk and would benefit from restoration (e.g., legacy trees, unique habitats).

(2) Overlay what is known about landscape patterns of vegetation and disturbance processes with items from step 1 above to determine:

a. Stands of high restoration value but low value as existing northern spotted owl habitat.

b. Stands of low restoration value but high value as existing northern spotted owl habitat.

c. Stands of low restoration value and low value as existing northern spotted owl habitat.

d. Stands of high restoration value and high value as existing northern spotted owl habitat.

In locations where there is high restoration value and high value as existing northern spotted owl habitat, a landscape assessment can help to build a strong rationale for impacting owl habitat functionality to achieve broader landscape goals. Conditions that may support management activities in these stands may include, but are not limited to:

(1) The patch of habitat is located in an area where it is likely unsustainable and has the potential for conveying natural disturbances across the landscape in ways that jeopardize large patches of suitable northern spotted owl habitat.

(2) There are nearby areas that are more likely to sustain suitable northern spotted owl habitat and are either currently habitat or will likely develop suitable conditions within the next 30 years.

(3) The patch of habitat does not appear to be associated with a northern spotted owl home range or to promote successful dispersal between existing home ranges.

(4) The area will still retain some habitat function after treatment, while still meeting the intended restoration objective. For example, stands that are suitable as foraging habitat may be degraded post treatment but remain foraging habitat after treatment. Or, stands may be downgraded to dispersal habitat as a result of treatment.

We do not expect the desired landscape conditions will be achieved within the next decade or two, but it will require a longer time to be restored as younger forests develop into northern spotted owl nesting, roosting, and foraging habitat. In the interim, management actions are needed that protect current habitat, especially where it occurs in larger blocks on areas of the landscape where it is more likely to be resistant or resilient to fires and other disturbance agents. Actions are also needed to accelerate the restoration of habitat, especially where it is consistent with overall forest restoration and occurs in those portions of the landscape that are less fire prone or are resilient in the face of these disturbances. The careful application of these types of activities will be necessary to achieve the desired future landscape that is resilient to future disturbances; a landscape in which the natural disturbance process no longer threaten the conservation of the northern spotted owl, but acts to maintain and restore necessary habitat components. As such, we anticipate that projects designed to achieve this goal will need to be of a larger spatial scale as to have a meaningful effect on wildfire behavior, severity, and extent. The effects of these projects will vary depending on existing condition, prescriptions, proximity of habitat, etc. It is likely that such projects may affect northern spotted owl critical habitat and require section 7 consultation.

Some situations also exist in the proposed critical habitat where northern spotted owl habitat has been created through fire suppression activities (e.g., meadow conversion, white fir intrusion), but retention of those forested habitat elements is contrary to the overall goals of ecosystem restoration and long-term security for the owl. Restoration projects that remove these elements, while recommended, may adversely affect northern spotted owls or their critical habitat and may need to be evaluated through the section 7 consultation process. Additional information about restoration activities in dry forests can be found in the Revised Recovery Plan under *Restoring Dry Forest Ecosystems* (USFWS 2011, p. III–32).

Redwood Coast

While the Redwood Coast region of coastal northern California is similar to the West Cascades/Coast region in many respects, there are some distinct differences in northern spotted owl habitat use and diet within this zone. The long growing season, combined with the redwood's ability to resprout from stumps, allows redwood stands to attain suitable stand structure for nesting in a relatively short period of time (40 to 60 years) if legacy structures are present. In contrast to the large, contiguous, older stands desired in other wet provinces, some degree of fine-scale fragmentation in redwood forests appears to benefit northern spotted owls. These openings provide habitat for the northern spotted owl's primary prey, the dusky-footed woodrat. High woodrat abundance is associated with dense shrub and hardwood cover that persists for up to 20 years in recent forest openings created by harvesting or burns. Under dense shrub and hardwood cover, woodrats can forage, build nests, and reproduce, relatively secure from owl predation. These sites quickly become overpopulated and surplus individuals are displaced into adjacent older stands where they become available as owl prey. When developing stands reach an age of around 20 years, understory vegetation is increasingly shaded-out, cover and food sources become scarce, and woodrat abundance declines rapidly. By this time, the stand that once supported a dense woodrat population makes a structural transition into a stand where woodrats are subject to intense owl predation. In northern spotted owl territories within the Redwood Forest zone, active management that creates small openings within foraging habitat can enhance northern spotted owl foraging opportunities and produce or retain habitat suitability in the short term. Actions consistent with this type of land management are not expected to adversely modify critical habitat.

Summary of Adverse Modification

This discussion has covered projects that may or may not require formal section 7 consultation. It is also important to distinguish between a finding that a project is likely to adversely affect critical habitat and a finding at the conclusion of formal consultation that a project is likely to destroy or adversely modify critical habitat; these are two very different outcomes. It is not uncommon for a proposed project to be considered as likely to adversely affect critical habitat and thus require formal consultation, but still warrant a conclusion that it will not destroy or adversely modify critical habitat. An action may destroy or adversely modify critical habitat if it adversely affects the essential physical or biological features to an extent that the intended conservation role of critical habitat for the northern spotted owl is appreciably reduced.

The adverse modification determination is made at the scale of the entire designated critical habitat unless the final critical habitat rule identifies another basis for that determination, such as at the scale of discrete units and/or groups of units necessary for different life cycle phases, units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographical distribution requirements of the species (USFWS and NMFS 1998, p. 4–39). In the case of spotted owl critical habitat, the adverse modification determination will be made at the scale of the entire designated critical habitat. However, by describing the relationship between the conservation role of affected subunits, units, and the entire designated critical habitat in the biological opinion, a sensitive analytical framework is established for informing the determination of whether a proposed action is likely to appreciably reduce the conservation role of the critical habitat overall. In this way, a proposed action that compromises the capability of a subunit or unit to fulfill its essential conservation role (e.g., demographic, genetic, or distributional support for spotted owl recovery) would represent an appreciable reduction in the conservation value of the entire designated critical habitat. This approach should avoid ''death-by-a-thousand-cuts'' outcomes of formal consultations (i.e., false, no-adverse-modification determinations). This approach will also take into account any redundancy in conservation function that may be associated with affected subunits or units for purposes of informing the significance of project effects relative to the conservation function of the entire designated critical habitat. Such redundancy is likely to decrease the significance of adverse project effects at the scale of the entire designated critical habitat.

As described above, we do not anticipate that activities consistent with the stated management goals or recommended recovery actions of the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011, Chapters II and III) would constitute adverse modification of critical habitat, even if those activities may have adverse effects in the short term, if the result over the

long term is an improvement in the function of the habitat to provide for the essential life-history needs of the northern spotted owl.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the northern spotted owl to determine if they are exempt under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the proposed revised critical habitat designation.

Approved INRMPs

Joint Base Lewis-McChord

Joint Base Lewis-McChord (JBLM), formerly known as Fort Lewis, is an 86,500-ac (35,000-ha) U.S. Army military reservation in western Washington, south of Tacoma and the Puget Sound. JBLM contains one of the largest remaining intact forest areas in the Puget Sound basin, with approximately 54,400 ac (22,000 ha) of forests and woodlands, predominantly of the dry Douglas-fir forest type and including some moist forest types (Douglas-fir, red cedar, hemlock). The forested area of JBLM is managed by the Base's Forestry Program, and the primary mission for the JBLM Forest is to provide a variety of forested environments for military training. JBLM has a history of applying an ecosystem management strategy to their forests to provide for multiple conservation goals, which have included promoting native biological diversity, maintaining and restoring unique plant communities, and developing late successional (older) forest structure. There are 14,997 ac (6,069 ha) of lands within the boundary of JBLM currently identified in the proposed critical habitat designation.

JBLM's INRMP, dated July 2006, covers the years 2006 through 2010. This INRMP is in the process of being updated; the Department of the Army informed us that a revised INRMP will be submitted to the Service in 2012 (Steucke 2008, in litt., p. 1). To date, JBLM has managed their forest lands according to their Forest Management Strategy, first prepared for then-Fort Lewis in 1995 by the Public Forestry Foundation based in Eugene, Oregon, in collaboration with The Nature Conservancy. The Forest Management Strategy was last revised in May 2005, and is also in the process of being updated (Forest Management Strategy 2005, entire).

The last INRMP identified management objectives for the conservation of the northern spotted owl. Specifically, the INRMP specified the objective of managing JBLM forests to develop spotted owl habitat characteristics, and indicated desired conditions of the forest to provide for nesting, roosting, foraging. and dispersal habitat (INRMP 2007, p. 3–18). Although northern spotted owls are not currently known to occupy JBLM, it is the only significant Federal ownership in this region of Washington, and it provides the largest contiguous block of forest in this area as well. The potential development of suitable owl habitat at JBLM provides one of the only feasible opportunities for establishing connectivity between owl populations in the Olympic Peninsula and the western Cascades Range. Connectivity allows gene flow between populations, and further maintains northern spotted owl distribution and metapopulation dynamics, which are important components of the recovery strategy for the northern spotted owl (USFWS 2011, p. III–1, III–44). The Forest Management Strategy (2005, p. 82) notes that the mosaic of dry forest, woodland, and prairie at JBLM is very different from typical forest landscapes that support northern spotted owls, and that while suitable habitat for dispersal of northern spotted owls can be achieved in the short term, at least 40 to 50 years may be needed to meet the desired condition for foraging, nesting, and roosting habitat.

JBLM's forest management program has the potential to provide a conservation benefit to the northern spotted owl. However, since their INRMP is currently undergoing revision and is subject to change, we are reserving judgment on whether management under the new INRMP may meet our criteria for exemption from critical habitat at this time. In accordance with section 4(a)(3)(B)(i) of the Act, if we determine prior to our final rulemaking that conservation efforts identified in the INRMP will provide a conservation benefit to the northern spotted owl, we may at that time exempt the identified lands from the final designation of critical habitat.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or 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 impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he 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.

Under section 4(b)(2) of the Act, we may exclude an area from designated

critical habitat based on economic impacts, impacts to national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis we make this determination, we can then exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in the overall conservation of the northern spotted owl through the continuation, strengthening, or encouragement of partnerships and the implementation of management plans or programs that provide equal or more conservation for the northern spotted owl than could be achieved through a designation of critical habitat. The Secretary can consider the existence of conservation agreements and other land management plans with Federal, private, State, and Indian 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. Consideration of relevant impacts of designation or exclusion under section 4(b)(2) may include, but is not limited to, any of the following factors: (1) Whether the plan provides specific information on how it protects the species and the physical and biological features, and whether the plan is at a geographical scope commensurate with the species; (2) whether the plan is complete and will be effective at conserving and protecting the physical and biological features; (3) whether a reasonable expectation exists that conservation management strategies and actions will be implemented, that those responsible for implementing the plan are capable of achieving the objectives, that an implementation schedule exists, and that adequate funding exists; (4) whether the plan provides assurances that the conservation strategies and measures will be effective (i.e., identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan); (5) whether the plan has a monitoring program or adaptive management to ensure that the conservation measures are effective; (6) the degree to which the record supports a conclusion that a critical habitat designation would impair the benefits of the plan; (7) the extent of public participation; (8) demonstrated track record of implementation success; (9) level of public benefits derived from encouraging collaborative efforts and encouraging private and local conservation efforts; and (10) the effect designation would have on partnerships.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of excluding a particular area outweigh the benefits of its inclusion in critical habitat. If we determine that the benefits of excluding a particular area outweigh the benefits of its inclusion, then the Secretary can exercise his discretion to exclude the area, provided that the exclusion will not result in the extinction of the species.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in proposed critical habitat may be appropriate for exclusion from the final designation. If our analysis results in a determination that the benefits of excluding particular areas from the final designation outweigh the benefits of designating those areas as critical habitat, then the Secretary may exercise his discretion to exclude the particular areas from the final designation.

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 Economics Analysis section, below), we consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned by the Department of Defense (DOD) where a national security impact might exist. We also consider whether Federal or private landowners or other public agencies have developed management plans or habitat conservation plants (HCPs) for the area or whether there are conservation partnerships or other conservation benefits that would be encouraged or discouraged by designation of, or exclusion from, critical habitat in an area. In addition, we look at the presence of Indian lands or Indian trust resources that might be affected, and consider the government-to-government relationship of the United States with Indian entities. We also consider any other relevant impacts that might occur because of the designation. To ensure that our final determination is based on the best available information, we are inviting comments on any foreseeable economic, national security, or other potential impacts resulting from this proposed designation of critical habitat from governmental, business, or private interests and, in particular, any potential impacts on small businesses.

For the reasons discussed above, if the Secretary decides to exercise his discretion under section 4(b)(2) of the Act, we have identified certain areas that we are proposing or considering for exclusion from the final revised critical habitat designation for the northern spotted owl. However, we solicit comments on the inclusion or exclusion of such particular areas, as well as any other areas identified in the proposed revised rule (see Public Comments section). During the development of the final revised designation, we will consider economic impacts, public comments, and other new information. In this proposed rule we have tentatively identified some additional areas that may be considered for exclusion from the final rule; however, the Secretary's decision as to which, if any, areas may be excluded from the final designation is not limited to these lands. Additional particular areas, in addition to those identified below for potential exclusion in this proposed rule, may be excluded from the final critical habitat designation under section 4(b)(2) of the Act. In other words, potential exclusions are not limited to those areas specifically identified in this proposed rule.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of

the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Oregon Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. The U.S. Army's Fort Lewis Military Reservation is the only DOD land included within the proposed revised designation of critical habitat. As described above, in preparing this proposal, we are considering Fort Lewis for exemption from the designation of critical habitat under section 4(a)(3) of the Act, pending our evaluation of their revised INRMP, scheduled for completion in 2012, to determine whether it provides a conservation benefit to the northern spotted owl. We have determined that the remaining lands within the proposed designation of critical habitat for the species are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, we do not anticipate excluding any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Factors

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships or relationships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Indian issues, and consider the government-to-government relationship of the United States with Indian entities. We also consider any other relevant impacts that might occur because of the designation. Our weighing of the benefits of inclusion versus exclusion considers all relevant factors in making a final determination as to what will result in the greatest conservation benefit to the listed species. Depending on the specifics of each situation, there may be cases where the designation of critical habitat will not necessarily provide enhanced protection, and may actually lead to a net loss of conservation benefit. Here we provide our analysis of areas proposed for the revised designation of critical habitat that may provide a greater conservation benefit to the northern spotted owl by exclusion from the designation. We invite public comment on these areas under consideration for exclusion.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands within the geographical area occupied by the species at the time of listing on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species.

The identification of areas that contain the features essential to the conservation of the species, or are otherwise essential for the conservation of the species if outside the geographical area occupied by the species at the time of listing, is a benefit resulting from the designation. The critical habitat designation process includes peer review and public comment on the identified physical and biological features and areas, and provides a mechanism to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the species, and is valuable to land owners and managers in developing conservation management plans by describing the essential physical and biological features and special management actions or protections that are needed for identified areas. Including lands in critical habitat also informs State agencies and local governments about areas that could be conserved under State laws or local ordinances.

The prohibition on destruction or adverse modification under Section 7(a)(2) of the Act constitutes the primary regulatory benefit of critical habitat designation. As discussed above, Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses also represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar because effects on habitat will often result in effects on the species. However, these two regulatory standards are different. The jeopardy analysis evaluates how a proposed action is likely to influence the likelihood of a species' survival and recovery. The adverse modification analysis evaluates how an action affects the capability of the critical habitat to serve its intended conservation role (USFWS, in litt. 2004). Although these standards are different, it has been the Service's experience that in many instances proposed actions that affect both a listed species and its critical habitat and that constitute jeopardy also constitute adverse modification. In some cases, however, application of these different standards results in different section 7(a)(2) determinations, especially in situations where the affected area is mostly or exclusively unoccupied critical habitat. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of non-Federal lands itself does not restrict any actions that destroy or adversely modify critical habitat. Aside from the requirement that Federal agencies ensure that their actions are not likely to result in destruction or adverse modification of critical habitat under section 7, the Act does not provide any additional regulatory protection to lands designated as critical habitat.

Second, designating critical habitat does not create a management plan for the areas; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are addressed in recovery plans,

management plans, and in section 7 consultation. The designation only limits destruction or adverse modification of critical habitat, not all adverse effects. By its nature, the prohibition on adverse modification ensures that the conservation role and function of those areas designated as critical habitat are not appreciably reduced as a result of a Federal action.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the species or critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may recommend additional conservation measures to minimize adverse effects to primary constituent elements, but such measures would be discretionary on the part of the Federal agency.

The designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act because of effects to critical habitat, the end result of consultation is to avoid adverse modification, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. On the other hand, voluntary conservation efforts by landowners can remove or reduce known threats to a species or its habitat by implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through implementing HCPs under section 10 of the Act, or other voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving project effects to critical habitat. Management plans can commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project; consultation does not require Federal agencies to provide for conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation. Therefore, we propose to exclude all private lands with current HCPs, SHAs, other active management plans or conservation agreements in the final critical habitat designation. We seek public comment on all of these potential exclusions.

Benefits of Excluding Private Lands

As noted above, the Secretary may exclude areas from critical habitat if he determines that the benefits of exclusion outweigh the benefits of including those areas as part of the critical habitat (unless exclusion of those areas will result in the extinction of the species). We believe that in some cases designation can negatively impact the working relationships and conservation partnerships we have formed with private landowners, and may serve as a disincentive for the formation of future partnerships or relationships that would have the potential to provide conservation benefits. We will consider whether the benefits of excluding private lands may outweigh the benefits of including those areas in the designation of critical habitat for the northern spotted owl.

The Service recognizes that most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (Lubowski *et al.* 2006, p. 35), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Groves *et al.* (2000, pp. 280–281) reported that about one-third of populations of federally listed species are found on Federal lands; private lands were found to provide for at least one population of more than two-thirds of federally listed species (Groves *et al.* 2000, p. 283).

Given the distribution of listed species with respect to landownership, the successful conservation of listed species in many parts of the United States will clearly depend upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting the willing cooperation of landowners is essential to understanding the status of species on non-Federal lands and necessary to implement recovery actions, such as the reintroduction of listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from voluntarily participating in the recovery of endangered or threatened species. Conservation agreements with non-Federal landowners, Safe Harbor Agreements, other conservation agreements, easements, and State and local regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage non-Federal landowners to enter into conservation agreements based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

We acknowledge that private landowners are often wary of the possible consequences of encouraging endangered species conservation on their property, and of regulatory action by the Federal Government under the Act. Social science research has demonstrated that, for many private landowners, government regulation under the Act is perceived as a loss of individual freedoms, regardless of whether that regulation may in fact result in any actual impact to the landowner (Brook *et al.* 2003, pp. 1644–1648; Conley *et al.* 2007, p. 141). Furthermore, in a recent study of private landowners who have experience with regulation under the Act, only 2 percent of respondents believed the Federal Government rewards private landowners for good management of their lands and resources (Conley *et al.* 2007, pp. 141, 144). According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 412; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, or control of invasive species) are necessary for species conservation (Bean 2002, pp. 412–413).

Since Federal actions such as the designation of critical habitat on private lands may reduce the likelihood that landowners will support and carry out conservation actions for the benefit of listed species, based on the research described above, we believe that in some cases the judicious exclusion of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a greater level of species conservation than critical habitat designation alone. Although we believe that the potentially positive contribution of private landowners with a demonstrated record of conservation management should be an important consideration when designating critical habitat, we wish to emphasize that we will continue to be discriminating in our evaluation of potential exclusions, and private lands will be excluded only should we determine that the benefits of exclusion outweigh the benefits of inclusion following a rigorous examination of the record on a case-by-case basis.

We are considering excluding private lands held under one or more ownerships in two localities in Sonoma and Napa Counties, California. The first area is located in southwestern Sonoma County near the mouth of the Russian River, in Subunit 4 of the Redwood Coast CHU. The combined area of private lands in this area is 28,932 ac (11,708 ha). The second area spans the Sonoma-Napa County line and lies west of St. Helena and Yountville, in Subunit 6 of the Interior Coastal California CHU. The combined area of private lands in this second area is 59,786 ac (24,194 ha). Each area contains one or more landholdings that are under conservation easements for agriculture and open space preservation. We are considering excluding these privately-owned lands because we believe that the greatest conservation benefit to the northern spotted owl in this region of little Federal land ownership may be derived from preserving good relationships with private landowners who have demonstrated themselves to be good stewards of the habitat essential to the conservation of the northern spotted owl. Our consideration of these lands for exclusion will be based on case-by-case reviews of how they are managed by each landowner, and what conservation mechanisms may be in place, such as easement provisions, that would act to conserve or enhance the suitability of northern spotted owl habitats. We request public comments on the relative benefits of inclusion or exclusion from the designation of critical habitat.

We believe that acknowledging the positive contribution these private landowners are currently making to the conservation of the northern spotted owl, and maintaining good working relationships with these landowners by excluding these areas may provide a significant benefit to the conservation of the northern spotted owl in this area where private lands will play an essential role in the recovery of the species. The exclusion of these areas may encourage these landowners to continue their positive management practices without fear of further government regulation. In addition, the exclusion of such lands may lay the foundation for building additional conservation partnerships and relationships with other private landowners, with conservation benefit not only for the northern spotted owl, but other endangered or threatened species as well.

In contrast, we believe there may be relatively little benefit to be gained by the designation of these privately owned lands. A potential benefit of designation would be the regulatory protections afforded to critical habitat under section 7(a)(2) of the Act. However, as described earlier, on private lands the regulatory protections of critical habitat only apply when there is a Federal nexus (actions funded, permitted, or otherwise carried out by the Federal Government), and we have no evidence to suggest that these regulatory protections are likely to be triggered on the private lands in the Redwood Coast CHU or Interior Coastal California CHU. Furthermore, most of these lands are currently occupied by the northern spotted owl. Thus, even if these lands are excluded from the final revised critical habitat designation, if the northern spotted owl is present and may be affected, actions with Federal involvement require consultation to review the effects of management activities that might adversely affect listed species under a jeopardy standard; this assessment includes effects to the species from habitat modification. Overall, given the low likelihood of a Federal nexus occurring on these lands, we believe the regulatory benefit of a critical habitat designation on these lands, if any, may be limited.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation is to trigger regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a) (2) of the Act. Where there is little likelihood of a Federal action, the benefits of this protection can be low. On the other hand, the benefits of excluding areas that are covered by voluntary conservation efforts can, in specific circumstances, be high. In this case, in weighing the potential benefits of inclusion versus benefits of exclusion, as detailed above, we believe the greatest conservation benefit to the northern spotted owl in the Redwood Coast CHU may result from the exclusion of privately owned lands from the final designation. Specific potential exclusions in the Redwood Coast CHU and Interior Coastal California CHU in northern California will be discussed in our Notice of Availability to be published in the **Federal Register** when the draft economic analysis is released for public comment. At that time the public will have an opportunity to review and comment on specific proposed exclusions. At present, we seek public comment on the general benefits of including or excluding private lands in this area [see Public Comments, above].

Table 5 identifies all private lands proposed or considered for exclusion, Table 6 identifies State lands proposed or considered for exclusion, and Table 7 identifies Congressionally reserved natural areas proposed for exclusion in the final rule. We ask for public comment on all of these possible exclusions, or information to identify any additional potential areas we should consider for exclusion and why.

TABLE 5—PRIVATE LANDS PROPOSED OR THAT MAY BE CONSIDERED FOR EXCLUSION FROM THE FINAL RULE

Type of agreement	Critical habitat unit	State	Land owner/agency	Acres	Hectares
Safe Harbor Agreements—proposed for exclusion.	WCC	WA	Port Blakely Tree Farms, L.P, Safe Harbor Agreement, Landowner Option Plan, Cooperative Habitat Enhancement.	421	170
	RWC	CA	Forster-Gill, Inc	236	95

TABLE 5—PRIVATE LANDS PROPOSED OR THAT MAY BE CONSIDERED FOR EXCLUSION FROM THE FINAL RULE—Continued

Type of agreement	Critical habitat unit	State	Land owner/agency	Acres	Hectares
Habitat Conservation Plans—proposed for exclusion.	RWC	CA	Van Eck Forest Foundation, Safe Harbor Agreement	2,163	875
	WCC	WA	Cedar River Watershed Habitat Conservation Plan	3,367	1,363
	WCC	WA	Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan.	3,175	1,285
	WCC/ECN	WA	Plum Creek Timber Central Cascades I-90 Habitat Conservation Plan.	33,764	13,664
	WCC	WA	West Fork Timber Habitat Conservation Plan	5,233	2,118
	RWC	CA	Green Diamond Resource Company Habitat Conservation Plan.	360,870	146,042
	RWC	CA	Humboldt Redwood Company, Habitat Conservation Plan.	211,700	85,672
	RWC	CA	Regli Estates Habitat Conservation Plan	500	202
	ICC	CA	Terra Springs Habitat Conservation Plan	41	16
Conservation Easements, Other Agreements or Partnerships—proposed for exclusion.	ECN	WA	Scofield Corporation Habitat Conservation Plan	40	16
	RWC	CA	Usal Forest	50,000	20,235
	RWC	CA	Big River, Salmon Creek, and Garcia River Forests	40,293	16,306
Total private lands proposed for exclusion.				711,803	288,059
Proposed Agreements that may be considered for exclusion.	RWC	CA	Mendocino Redwood Company Proposed HCP	232,584	94,123
	WCC/ECN	WA	SDS Co. & Broughton Lumber Co. Proposed Conservation Plan.	16,031	6,487
Other Private lands that may be considered for exclusion.	various	WA[1]	various	133,895	54,186
	various	OR	various	0	0
	various	CA	various	174,587	70,450
Total additional private lands that may be considered for exclusion.				557,097	225,246
Total private lands proposed for exclusion or that may be considered for exclusion.				1,268,900	513,305

[1] These lands are within SOSEAs—Spotted Owl Special Emphasis Areas.

TABLE 6—STATE LANDS PROPOSED OR THAT MAY BE CONSIDERED FOR EXCLUSION FROM THE FINAL RULE

State	Land owner/agency	Acres	Hectares
WA	Washington Dept. of Natural Resources State Lands HCP—proposed for exclusion.	225,013	91,059
	Washington State Parks—proposed for exclusion	104	42
	Washington Department of Fish and Wildlife Lands—may be considered for exclusion.	1,752	709
OR	Oregon Department of Forestry—may be considered for exclusion	228,733	92,565
CA	California State Parks—proposed for exclusion	164,672	66,640
	California State Forests—may be considered for exclusion	50,762	20,543
Total State lands proposed for exclusion.		389,789	157,809
Total State lands that may be considered for exclusion.		281,247	113,749
Total State Lands		671,036	271,558

TABLE 7—CONGRESSIONALLY RESERVED NATURAL AREAS PROPOSED FOR EXCLUSION FROM THE FINAL RULE

State	*Acres*	*Hectares*
WA	1,530,205	619,252
OR	499,836	202,277
CA	616,692	249,567
Total	2,646,733	1,071,095

Benefits of Excluding Lands With Safe Harbor Agreements

A Safe Harbor Agreement (SHA) is a voluntary agreement involving private or other non-Federal property owners whose actions contribute to the recovery of listed species. The agreement is between cooperating non-Federal property owners and the Service. In exchange for actions that contribute to the recovery of listed species on non-Federal lands, participating property owners receive formal assurances from the Service that if they fulfill the conditions of the SHA, the Service will not require any additional or different management activities by the participants without their consent. In addition, at the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the SHA.

As detailed above in the section ''Benefits of Excluding Private Lands,'' because many endangered and threatened species occur exclusively, or to a large extent, on privately owned property, the involvement of the private sector in the conservation and recovery of species is crucial. Property owners are often willing partners in efforts to recover listed species. However, some property owners may be reluctant to undertake activities that support or attract listed species on their properties, due to fear of future property-use restrictions related to the Act. To address this concern, a SHA provides that future property-use limitations will not occur without the landowner's consent if the landowner is in compliance with the permit and Agreement and the activity is not likely to result in jeopardy to the listed species.

Central to this approach is that the actions taken under the SHA must provide a net conservation benefit that contributes to the recovery of the covered species. Examples of conservation benefits include:

- Reduced habitat fragmentation;
- Maintenance, restoration, or enhancement of existing habitats;
- Increases in habitat connectivity;
- Stabilized or increased numbers or distribution;
- The creation of buffers for protected areas; and
- Opportunities to test and develop new habitat management techniques.

By entering into an SHA, property owners receive assurances that land use restrictions will not be required even if the voluntary actions taken under the agreement attract particular listed species onto enrolled properties or increase the numbers of distribution of those listed species already present on those properties. The assurances are provided through an enhancement of survival permit issued to the property owner, under the authority of section 10(a)(1)(A) of the Act. To implement this provision of the Act, the Service and National Marine Fisheries Service issued a joint policy for developing SHAs for listed species on June 17, 1999 (64 FR 32726). The Service simultaneously issued regulations for implementing SHAs on June 17, 1999 (64 FR 32706). A correction to the final rule was announced on September 30, 1999 (64 FR 52676). The enhancement of survival permit issued in association with an SHA authorizes incidental take of species that may result from actions undertaken by the landowner under the SHA, which could include returning the property to the baseline conditions at the end of the agreement. The permit also specifies that the Service will not require any additional or different management activities by participants without their consent if the permittee is in compliance with the requirements of the permit and the SHA and the permittee's actions are not likely to result in jeopardy.

The benefits of excluding lands with approved SHAs from critical habitat designation may include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Even if any additional regulatory burden would be unlikely due to a lack of a Federal nexus, as described above in the section ''Benefits of Excluding Private Lands,'' the designation of critical habitat could nonetheless have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of government regulation. We believe that an exclusion of lands under an approved SHA would be in keeping with the spirit of the agreement. An additional benefit of excluding lands covered by approved SHAs from critical habitat designation is that it may make it easier for us to seek new partnerships with future SHA participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, in cases where potential partners may be reluctant to encourage the development of habitat that supports threatened or endangered species. In such cases, we may be able to implement conservation actions that we would be unable to accomplish otherwise. By excluding these lands, we may preserve our current partnerships and encourage additional future conservation actions.

In weighing the benefits of inclusion versus the benefits of exclusion for lands subject to approved SHAs, it is important to note that a fundamental requirement of an SHA is an advance determination by the Service that the provisions of the SHA will result in a net conservation benefit to the listed species. Approved SHAs have, therefore, already been determined to provide a net conservation benefit to the listed species; in addition, the management activities provided in a SHA often provide conservation benefits to unlisted sensitive species as well. As described earlier, the designation of critical habitat is unlikely to provide any realized conservation benefit to the species on non-Federal lands absent a Federal nexus for an activity. Especially where further Federal action is unlikely, the net conservation benefit provided by the terms of the SHA itself, considered in conjunction with the benefit of excluding lands subject to an SHA by preserving our working relationships with landowners who have entered into SHAs with the Service, and the benefit of laying the positive groundwork for possible future agreements with other landowners, may collectively outweigh the potentially limited benefit that would be realized on these lands from the designation of critical habitat. However, as with all potential exclusions under consideration, lands subject to an SHA will only be excluded should we determine that the benefits of exclusion outweigh the benefits of inclusion following a rigorous examination of the record on a case-by-case basis.

We note that permit issuance in association with SHA applications requires consultation under section 7(a)(2) of the Act, which would include the review of the effects of all-SHA-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section

7(a)(2) of the Act, and we would review these actions for possible significant habitat modification in accordance with the definition of harm, described in the following section ''Benefits of Excluding Lands with Habitat Conservation Plans.''

We further note that SHAs may include a provision that the landowner may return the area to baseline conditions upon expiration of the permit. The term of the permit is thus an important consideration in weighing the relative benefits of inclusion versus exclusion from the designation of critical habitat. However, we note that the Service has the right to revise a critical habitat designation at any time. Furthermore, we note that the potential benefit of acknowledging the positive conservation contributions of landowners willing to enter into voluntary conservation agreements with the Service for the recovery of endangered or threatened species may nonetheless outweigh the loss of benefit that may be incurred through a possible return to baseline following permit expiration. As noted above, such circumstances require careful consideration on a case-by-case basis in order to make a final determination of the benefits of exclusion or inclusion in a critical habitat designation.

Below is a brief description of each SHA and the lands proposed as critical habitat covered by each agreement that we are considering for exclusion from critical habitat designation under section 4(b)(2) of the Act.

State of California

Forster-Gill, Inc., Safe Harbor Agreement

We propose to exclude lands covered by the SHA between Forster-Gill, Inc., and the Service in the Redwood Coast CHU in California from the final critical habitat designation. The enhancement of survival permit associated with this SHA was noticed in the **Federal Register** on March 22, 2002 (67 FR 13357), and issued June 18, 2002. The term of the agreement is 80 years, and the term of the permit is 90 years. The SHA provides for the creation and enhancement of habitat for the northern spotted owl on 236 ac (95 ha) of lands in Humboldt County, California, and provides for continued timber harvest on those lands.

There are two baseline conditions that will be maintained under the SHA: (1) Protection of an 11.2-ac (5-ha) no-harvest area that will buffer the most recent active northern spotted owl nest site, but will also be maintained in the absence of a nest site; and (2) maintenance of 216 ac (87 ha) on the property such that the trees will always average 12 to 24 in (30 to 60 cm) dbh with a canopy closure of 60 to 100 percent. At the time of the agreement, forest conditions were on the lower end of the diameter and canopy closure ranges. By the end of the agreement, the property will be at the upper end of the diameter and canopy closure ranges.

Under the SHA, Forster-Gill, Inc., agrees to: (1) Annually survey and monitor for the location and reproductive status of northern spotted owls on the property; (2) protect all active nest sites (locations where nesting behavior is observed during any of the previous 3 years) with a no-harvest area that buffers the nest site by no less than 300 ft (90 m) and limits timber harvest operations within 1,000 ft (300 m) of an active nest site during the breeding season, and only allows use of existing haul roads; and (3) manage the second-growth redwood timber on the property in a manner that maintains suitable northern spotted owl habitat while creating over time the multilayered canopy structure with an older, larger tree component associated with high-quality spotted owl habitat. The SHA is expected to provide, maintain, and enhance for the 80-year life of the agreement over 200 ac (80 ha) of northern spotted owl habitat within a matrix of private timberland. The cumulative impact of the agreement and the timber management activities it covers, which are facilitated by the allowable incidental take, is expected to provide a net benefit to the northern spotted owl. The complete text of the Forster-Gill Safe Harbor Agreement can be viewed at *http://www.fws.gov/arcata/es/birds/NSO/documents/Forster-Gill_SHA.pdf.*

Van Eck Forest Foundation Safe Harbor Agreement

We propose to exclude lands covered by a SHA between the Fred M. van Eck Forest Foundation and the Service in the Redwood Coast CHU in California from the final critical habitat designation. The enhancement of survival permit associated with this SHA was noticed in the **Federal Register** on July 8, 2008 (73 FR 39026), and issued August 18, 2008. The term of the permit and the agreement is 90 years. The SHA provides for the creation and enhancement of habitat for the northern spotted owl on 2,163 ac (875 ha) of lands in Humboldt County, California, and provides for continued timber harvest on those lands.

At the time of the agreement, the lands under consideration supported 1,730 ac (700 ha) of northern spotted owl nesting and roosting habitat and one northern spotted owl activity center. We anticipate that under the northern spotted owl habitat creation and enhancement timber management regime proposed in the SHA that approximately 1,947 ac (788 ha) of nesting and roosting habitat and potentially up to five northern spotted owl activity centers could exist on the property at the end of 90 years. The SHA does not provide for a return to baseline conditions at the end of the agreement term. Instead, the agreement provides that if more than five northern spotted owl activity centers should become established on the property during the 90-year term, the landowner would be allowed to remove such additional activity centers during the agreement period. Under the SHA, the Fred M. van Eck Forest Foundation agrees to: (1) Conduct surveys annually to determine the locations and reproductive status of any northern spotted owls; (2) protect up to five activity centers (locations where owls are observed nesting or roosting) with a no-harvest area that buffers the activity center by no less than 100 ft (30 m); (3) utilize selective timber harvest methods such that suitable nesting habitat is maintained within 300 ft (91 m) of each activity center; (4) limit noise disturbance from timber harvest operations within 1,000 ft (305 m) of an active nest during the breeding season; and (5) manage all second-growth redwood timber on the property in a manner that maintains or creates suitable nesting and roosting habitat over time. The cumulative impact of the agreement and the timber management activities it covers, which are facilitated by the allowable incidental take, is expected to provide a net benefit to the northern spotted owl. The complete text of the Van Eck Forest Foundation Safe Harbor Agreement can be viewed at *http://www.fws.gov/arcata/es/birds/NSO/documents/Van-Eck_SHA.pdf.*

State of Oregon

No lands covered under a Safe Harbor Agreement in Oregon are currently proposed as northern spotted owl critical habitat. However, we want to use this opportunity to inform the public of the programmatic SHA between the Oregon Department of Forestry (ODF), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), and the Fish and Wildlife Service in Oregon. This program has excellent potential to contribute to spotted owl recovery by increasing the quality and quantity of spotted owl habitat in areas where such habitat is lacking. The enhancement of

survival permit associated with this SHA was noticed in the **Federal Register** on July 21, 2009 (74 FR 35883) and issued July 26, 2010. The term of the permit and SHA is 50 years. The permit authorizes ODF to extend incidental take coverage with assurances through issuance of certificates of inclusion to eligible landowners who are willing to carry out habitat management measures that would benefit the northern spotted owl. The covered area or geographical scope of SHA includes non-Federal forest lands within the range of the northern spotted owl in Oregon. The full text of the Programmatic Safe Harbor Agreement between the Oregon Department of Forestry, U.S. Department of Agriculture, Natural Resources Conservation Service, and the U.S. Fish and Wildlife Service is available for review at *http://ecos.fws.gov/docs/plan_documents/tsha/tsha_826.pdf.*

State of Washington

Port Blakely Tree Farms L.P. (Morton Block) Safe Harbor Agreement, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement

We propose to exclude lands covered by the Port Blakely Tree Farms (also known as Morton Block) SHA in the West Cascades Central CHU in Washington from the final critical habitat designation. The enhancement of survival permit associated with this SHA was noticed in the **Federal Register** on December 17, 2008 (73 FR 76680) and issued May 22, 2009. The SHA and permit include both the marbled murrelet (*Brachyramphus marmoratus*) and the northern spotted owl, and covers an area of 45,306 ac (18,335 ha) of managed forest lands known as the ''Morton Block,'' in Lewis and Skamania Counties. The term of the permit and SHA is 60 years.

The covered lands have been intensively managed and at the time the permit was issued were not known to be occupied by either the spotted owl or the marbled murrelet. The environmental baseline was measured in terms of dispersal habitat for the northern spotted owl and potential nesting habitat for the marbled murrelet. There are no known northern spotted owls nesting on Port Blakely lands. However, spotted owls have historically nested on adjacent Federal lands and the 1.8-mi (2.9-km) radius circles around those sites that are used for evaluating potential habitat availability for spotted owls extend onto Port Blakely lands. Because of this, Port Blakely Tree Farms conducted habitat evaluations of their properties to determine the amount of suitable spotted owl habitat present. The baseline estimate for the SHA is 8,360 ac (3,383 ha) of spotted owl dispersal habitat.

Under the SHA, Port Blakely will implement voluntary conservation measures that are expected to provide net conservation benefits to the northern spotted owl and marbled murrelet. The SHA also provides that Port Blakely will manage their tree farm in a manner that contributes to the goals of the Mineral Block Spotted Owl Special Emphasis Area (SOSEA) according to Washington Forest Practices Rules and Regulations (Washington Forest Practices Board 2002, WAC 222–16–080, WAC 222–16–086). In the SHA, Port Blakely agrees to implement enhanced forest management measures that would create potential habitat for the northern spotted owl and marbled murrelet, such as longer harvest rotations, additional thinning to accelerate forest growth, a snag creation program, retaining more down wood than is required by Washington Forest Practices Rules, establishing special management areas and special set-aside areas, and monitoring. The terms of the agreement are intended to produce conditions that will facilitate the dispersal of the northern spotted owl across the Port Blakely ownership, and allow marbled murrelets to nest. The full text of the Port Blakely Tree Farms L.P. (Morton Block) Safe Harbor Agreement, Landowner Option Plan, and Cooperative Habitat Enhancement Agreement is available at *http://ecos.fws.gov/docs/plan_documents/tsha/tsha_696.pdf.*

Benefits of Excluding Lands With Habitat Conservation Plans

Habitat Conservation Plans (HCPs) are planning documents required as part of an application for an ''incidental take'' permit. They describe the anticipated effects of the proposed taking; how those impacts will be minimized, or mitigated; and how the HCP is to be funded. HCPs can apply to both listed and nonlisted species, including those that are candidates or have been proposed for listing. Anyone whose otherwise-lawful activities will result in the ''incidental take'' of a listed wildlife species needs a permit. The Act defines ''take'' as ''* * * to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' ''Harm'' includes significant habitat modification that actually kills or injures a listed species through impairing essential behavior such as breeding, feeding, or sheltering. Section 9 of the Act prohibits the take of endangered and threatened species. The purpose of the incidental take permit is to exempt non-Federal permit-holders—such as States and private landowners—from the prohibitions of section 9, not to authorize the activities that result in take.

In developing HCPs, people applying for incidental take permits describe measures designed to minimize and mitigate the effects of their actions— to ensure that species will be conserved and to contribute to their recovery. Habitat Conservation Plans are required to meet the permit issuance criteria of section 10(a)(2)(B) of the Act:

- Taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking;
- The applicant will ensure that adequate funding for the plan will be provided;
- Taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- Other measures, as required by the Secretary, will be met.

The benefits of excluding lands with approved HCPs from critical habitat designation may include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Many HCPs take years to develop and, upon completion, are consistent with the recovery objectives for listed species covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is that it can make it easier for us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. HCPs often cover a wide range of species, including species that are not State and federally-listed and would otherwise receive little protection from development. By excluding these lands, we preserve our current partnerships and encourage additional future conservation actions.

We also note that permit issuance in association with HCP applications requires consultation under section 7(a)(2) of the Act, which would include the review of the effects of all HCP-covered activities that might adversely impact the species under a jeopardy

standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possible significant habitat modification in accordance with the definition of harm referenced above.

We consider a current HCP to be appropriate for consideration for exclusion from a final critical habitat designation under section 4(b)(2) of the Act if:

(1) It provides for the conservation of the essential physical and biological features or areas otherwise determined to be essential;

(2) There is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future;

(3) The conservation strategies in the HCP are likely to be effective; and

(4) The HCP contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

Below is a brief description of each HCP and the lands proposed as critical habitat covered by each plan that we are considering for exclusion from critical habitat designation under section 4(b)(2) of the Act.

State of California

Green Diamond Resource Company Habitat Conservation Plan

We propose to exclude lands managed under the Green Diamond Resource Company (formerly Simpson Timber Company) HCP in the Redwood Coast CHU in California from the final critical habitat designation. The permit issued in association with this HCP was initially noticed in the **Federal Register** on May 27, 1992 (57 FR 22254) and issued September 17, 1992. Both the HCP and the permit had a term of 30 years, with a comprehensive review scheduled after 10 years to review the efficacy of the plan. The permit allowed incidental take of up to 50 pairs of northern spotted owls and their habitat during the course of timber harvest operations on 383,106 ac (155,041 ha) of forest lands in Del Norte and Humboldt Counties. At the time the permit was issued, more than 100 northern spotted owl nest sites or activity centers were known or suspected on the property. The Service determined that the projected growth and harvest rates indicated more habitat of the age class primarily used by northern spotted owls would exist on the property at the end of the 30-year permit period. In addition, the HCP provided that nest sites would be protected during the breeding season, and no direct killing or injuring of owls was anticipated. Simpson also agreed to continue their monitoring programs, in which more than 250 adult owls and more than 100 juveniles were already banded, as well as analyses of timber stands used by owls.

As required by the terms of the HCP, Green Diamond and the Service conducted a comprehensive review of the first 10 years of implementation, including a comparison of actual and estimated levels of owl displacement, a comparison of estimated and actual distribution of habitat, a reevaluation of the biological basis for the HCP's conservation strategy, an examination of the efficacy of and continued need for habitat set-asides, and an estimate of future owl displacements. During the comprehensive review, Green Diamond requested an amendment to the 1992 ITP to allow incidental take of up to eight additional spotted owl pairs. This request was noticed in the **Federal Register** on February 26, 2007 (72 FR 8393) and the modified permit was issued in October 2007. In addition, in April, 2011, Green Diamond sold 22,236 ac (8,999 ha) of its lands covered by the HCP to the Yurok Tribe; as those lands are no longer covered by the HCP, the current total of the covered lands is 360,870 ac (146,042 ha).

On April 16, 2010, we announced our intent to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) in response to an expected new HCP from Green Diamond, which would include provisions for the northern spotted owl and possibly the Pacific fisher (*Martes pennanti*), a species which may be considered for listing during the term of the HCP. This new HCP, if completed and approved, would replace the 1992 HCP, and would require the issuance of a new incidental take permit. The proposed new HCP is intended to address the retention of suitable spotted owl nesting habitat, the development of older forest habitat elements and habitat structures, and future establishment of spotted owl nest sites in streamside retention zones, cluster owl sites in favorable habitat areas, and initiate future research on other wildlife species such as fishers and barred owls. As this HCP has not yet been completed, however, we cannot consider it for exclusion at this point in time. The existing HCP originally completed in 1992 is still in effect as of this date, and is intended to be excluded The full text of the Green Diamond HCP is available at *http://www.fws.gov/arcata/es/birds/NSO/documents/Simpson_(Green_Diamond)_1992_NSO_HCP_Part_A.pdf* and *http://www.fws.gov/arcata/es/birds/NSO/documents/Simpson_(Green_Diamond)_1992_NSO_HCP_Part_B_Large maps.pdf.*

Humboldt Redwood Company Habitat Conservation Plan

We propose to exclude lands managed under the Humboldt Redwood Company (formerly Pacific Lumber) HCP in the Redwood Coast CHU in California from the final critical habitat designation. The permit under this HCP with a term of 50 years was noticed on July 14, 1998 (63 FR 37900) and issued on March 1, 1999. The HCP includes 211,700 ac (85,672 ha) of commercial timber lands in Humboldt County, essentially all of the formerly Pacific Lumber timberlands outside of the Headwaters Preserve. The Humboldt Redwood Company HCP includes nine nonlisted species (including one candidate species) and three listed species, including the northern spotted owl. Activities covered by the HCP include forest management activities and mining or other extractive activities. With regard to the northern spotted owl in particular, the HCP addresses the harvest, retention, and recruitment of requisite habitat types and elements within watershed assessment areas and individual northern spotted owl activity sites.

The management objectives of the HCP are to minimize disturbance to northern spotted owl activity sites, monitor to determine whether these efforts maintain a high-density and productive population of northern spotted owls, and apply adaptive management techniques as necessary. The other conservation elements of the HCP are expected to aid in the retention and recruitment of potential foraging, roosting, and nesting habitat in watersheds across the ownership. Specifically, the HCP states that the silvicultural requirements associated with riparian management zones, the mass wasting avoidance strategy, the cumulative effects/disturbance index restrictions, the marbled murrelet conservation areas, and the retention standard of 10 percent late seral habitat for each watershed assessment area are likely to provide suitable habitat for northern spotted owl. In addition, there are specific habitat retention requirements to conserve habitat for foraging, roosting, and nesting at

northern spotted owl activity sites. Details of the Humboldt Redwood Company HCP are available at *http://www.fws.gov/arcata/es/birds/NSO/documents/Pacific_Lumber_Co_(Humboldt_Redwood_Co.)_1999_Final_HCP.pdf.*

Regli Estates Habitat Conservation Plan

We propose to exclude lands managed under the Regli Estates HCP in the Redwood Coast CHU from the final critical habitat designation. The permit issued under this HCP in 1995 (noticed July 17, 1995 (60 FR 36432) and issued August 30, 1995) covers 500 ac (202 ha) in Humboldt County, California, to be used for forest management activities. Two listed species, the marbled murrelet and northern spotted owl, as well as two nonlisted species are covered under the incidental take permit for a period of 20 years. Provisions in the HCP for the northern spotted owl include the mitigation of any impacts from forest management activities by implementing selective harvest techniques that would maintain owl foraging habitat in all harvested areas, protecting an 80-ac (32-ha) core nesting area for one of the two owl pairs known to exist in the HCP area, and planting conifer tree species on approximately 80 ac (32 ha) of currently unforested habitat within the HCP area, which would result in a net increase in forested habitat over time. In addition, take of owls would be minimized using seasonal protection measures specified in the HCP. Details of the Regli Estates HCP are available at *http://www.fws.gov/arcata/es/birds/NSO/documents/Regli_Estates_1995_Final_HCP.pdf.*

Terra Springs Habitat Conservation Plan

We propose to exclude lands managed under the Terra Springs LLC Low Effect HCP in the Interior California Coast CHU from the final critical habitat designation. The permit issued in association with this HCP (noticed October 29, 2002 (67 FR 65998), and issued in 2004) has a term of 30 years and includes 76 ac (31 ha) of second-growth forest lands in Napa County, California. This HCP addresses the effects of timber harvest and conversion of 22 ac (9 ha) of forest lands to vineyard and any subsequent removal of commercial conifer trees from the remainder of the covered lands. The HCP provides a conservation program to minimize and mitigate for the covered activities, including a deed restriction that requires management in perpetuity of 41 ac (16 ha) of the property as nesting and roosting quality habitat for the northern spotted owl. In addition to mitigation, the Plan also includes measures to minimize take of the northern spotted owl. Details of the Terra Springs HCP are available at *http://www.fws.gov/arcata/es/birds/NSO/documents/Terra_Springs_2003_Final_HCP.pdf.*

State of Oregon

No lands covered under an HCP in the State of Oregon are currently proposed as critical habitat.

State of Washington

Cedar River Watershed Habitat Conservation Plan

We propose to exclude lands managed under the Cedar River Watershed HCP in in King County, Washington from the final critical habitat designation. The City of Seattle completed an HCP that covers the City's 90,535-ac (36,368-ha) watershed and the City's water supply and hydroelectric operations on the Cedar River, which discharges into Lake Washington. Based on this HCP, we issued a permit April 21, 2000 (noticed December 11, 1998 (63 FR 68469)), that covers forestry restoration activities including riparian thinning, road abandonment, and timber-stand improvement in the upper Cedar River Watershed. It also provides for activities associated with the development of utilities and infrastructure, recreational activities, and water activities. The plan was prepared to address the declining populations of salmon, steelhead, and other species of fish and wildlife in the Cedar River basin, and includes habitat-based conservation and mitigation strategies for all species addressed in the HCP, as well as species-specific conservation and mitigation strategies for all listed species. Details regarding the City of Seattle Cedar River Watershed HCP are available at *http://www.seattle.gov/util/About_SPU/Water_System/Habitat_Conservation_Plan/index.asp.*

Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan

The Service proposes to exclude lands managed under the Green River Water Supply Operations and Watershed Protection HCP in the State of Washington from the final critical habitat designation. The permit associated with this HCP was noticed in the **Federal Register** on August 21, 1998 (63 FR 44918), and issued on July 6, 2001. The Green River Water Supply Operations and Watershed Protection HCP addresses upstream and downstream fish passage issues, flows in the Middle and lower Green River, and timber and watershed-management activities on Tacoma-owned land in the upper Green River Watershed of 15,843 ac (6,411 ha). The HCP covers 32 species of fish and wildlife, including the northern spotted owl and 10 other listed species under an agreement designed to allow the continuation of water-supply operations on the Green River, and covers forest management and water activities. The plan provides for fish passage into and out of the upper Green River Watershed, and serves as an umbrella for a number of agreements for river operations, water-supply operations, and forest and land management, including several major habitat-restoration projects. Details of the Green River Water Supply Operations and Watershed Protection HCP are available at *http://www.mytpu.org/tacomawater/water-conservation/environment/fish-wildlife/habitat-conservation-plan.htm.*

Plum Creek Timber Central Cascades Habitat Conservation Plan

We propose to exclude lands managed under the Plum Creek Timber Central Cascades HCP in the State of Washington in the final critical habitat designation. The permit associated with the Plum Creek Timber HCP was first noticed in the **Federal Register** on November 17, 1995 (60 FR 57722), issued on June 27, 1996, and later modified in December of 1999 as noticed on February 10, 2000 (65 FR 6590). The permit has a term of 50 years (with an option to extend to 100 years if certain conditions are met) and covers 84,600 ac (34,236 ha) of lands in the Interstate-90 corridor in King and Kittitas Counties, Washington. The HCP includes over 315 species of fish and wildlife, including the northern spotted owl and 7 other listed species. The plan addresses forest-management activities across an area of industrial timberlands in Washington's central Cascade Mountains, and provides for management of the northern spotted owl based on landscape conditions tailored to the guidelines provided by the NWFP by providing additional protection to northern spotted owl sites near Late Successional Reserves. Wildlife trees are retained in buffers of natural features (e.g., caves, wetlands, springs, cliffs, talus slopes) and streams, as well as scattered and clumped within harvest units. The HCP also requires Plum Creek to maintain and grow forests of various structural stages across all of their HCP ownerships. This commitment of forest stages, in combination with wildlife trees retained within harvest units and stream and landscape-feature buffers will provide a

matrix of habitat conditions that complements the owl habitat provided in the HCP. Stands containing scattered leave trees following harvest will be expected to become more valuable for spotted owls at earlier ages than those harvested using previous methods. Details of the Plum Creek Timber Central Cascades HCP are available at *http://www.fws.gov/wafwo/CHP_new.html.*

Washington State Department of Natural Resources State Lands Habitat Conservation Plan

We propose to exclude lands managed under the Washington State Department of Natural Resources (WDNR) State Lands HCP in multiple CHUs in Washington from the final critical habitat designation. The WDNR State Lands HCP covers approximately 1.7 million ac (730,000 ha) of State forest lands within the range of the northern spotted owl in the State of Washington. The majority of the area covered by the HCP is west of the Cascade Crest and includes the Olympic Peninsula and southwest Washington. The WDNR HCP lands on the west side of the Olympic Peninsula are managed as the Olympic Experimental State Forest. The remainder of the area is on the east side of the Cascade Range within the range of the northern spotted owl. The permit associated with this HCP, issued January 30, 1997, was noticed in the **Federal Register** on April 5, 1996 (61 FR 15297), has a term of 70 to 100 years, and covers activities primarily associated with commercial forest management, but also includes limited non-timber activities such as some recreational activities. The HCP covers all species, including the northern spotted owl and other listed species.

The HCP addressed multiple species through a combination of strategies. The marbled murrelet is addressed through a combination of research, modeling, surveys, and development of a long-term plan to retain and protect important old-forest habitat. The HCP also includes a series of Natural Area Preserves and Natural Resource Conservation Areas. Riparian conservation includes buffers on fishbearing streams as well as substantial buffers on streams and wetlands without fish. Wildlife trees are retained in buffers of natural features (e.g., caves, wetlands, springs, cliffs, talus slopes) and streams, as well as scattered and clumped within harvest units. The HCP also requires WDNR to maintain and grow forests of various structural stages across all of their HCP ownerships. Specifically for spotted owls, they have identified portions of the landscape upon which they will manage for nesting, roosting, and foraging (NRF) habitat for spotted owls. These areas are known as NRF Management Areas (NRFMAs) and were located to provide demographic support that would strategically complement the NWFP's Late-Successional Reserves as well as those Adaptive Management Areas that have late-successional objectives. The NRFMAs also were situated to help maintain species distribution. Generally, these NRFMAs will be managed so that approximately 50 percent of those lands will develop into NRF habitat for the northern spotted owl over time. Within this 50 percent, certain nest patches containing high-quality nesting habitat are to be retained and grown. Since the HCP was implemented, within the NRFMAs, WDNR has carried out 5,100 ac (2,064 ha) of pre-commercial thinning and 7,800 ac (3,156 ha) of timber harvest specifically configured to enhance spotted owl habitat. WDNR's habitat enhancement activities will continue under the HCP.

Some areas outside of the NRFMAs are managed to provide for dispersal and foraging conditions in 50 percent of the forests in those areas; these were strategically located in landscapes important for connectivity. The Olympic Experimental State Forest is managed to provide for spotted owl conservation across all of its lands. Even in areas not specifically managed for spotted owls, WDNR has committed to providing a range of forest stages across the landscape to address multiple species. This commitment of forest stages, in combination with wildlife trees retained within harvest units and stream and landscape-feature buffers, will provide a matrix of habitat conditions that will also provide some assistance in conserving spotted owls. Stands containing scattered leave trees following harvest will be expected to become more valuable for spotted owls at earlier ages than those harvested using previous methods. Owls across the WDNR HCP are expected to benefit from the combination of these strategies. Details of the WDNR HCP are available at *http://www.dnr.wa.gov/researchscience/topics/trustlandshcp/Pages/Home.aspx.*

West Fork Timber Habitat Conservation Plan

We propose to exclude lands managed under the West Fork Timber HCP (formerly known as Murray Pacific) in the West Cascades Central CHU from the final critical habitat designation. The West Fork Timber HCP was the first multi-species HCP on forested lands in the Nation. The permit associated with the West Fork Timber HCP has a term of 100 years and was first issued on September 24, 1993; amended on June 26, 1995; and amended again on October 16, 2001 (66 FR 52638). The HCP includes 53,558 ac (21,674 ha) of commercial timber lands managed as a tree farm in Lewis County, Washington. The HCP was first developed to allow for forest-management activities and provide for the conservation of the northern spotted owl; the amended HCP provides for all species, including 6 listed species. The HCP is designed to develop and maintain owl dispersal habitat across 43 percent of the tree farm. In addition, the HCP provides for leaving at least 10 percent of the tree farm in reserves for the next 100 years. These reserves will primarily take the form of riparian buffers averaging at least 100 ft (30 m) on each side of all fish-bearing streams, as well as other buffers and set-a-side areas. Other provisions of the HCP are designed to ensure that all forest habitat types and age classes currently on the tree farm, as well as special habitat types such as talus slopes, caves, nest trees, and den sites, are protected or enhanced. Details of the West Fork Timber HCP are available at *http://www.fws.gov/wafwo/CHP_new.html.*

SDS Company LLC and Broughton Lumber Company Proposed Conservation Plan

We may consider excluding forest lands owned and managed by the SDS Company LLC and Broughton Lumber Company in Washington and Oregon. The companies are in the process of negotiating a conservation plan (either an HCP or an SHA) with the Service. If the spotted owl provisions of the conservation plan are finalized, and the permit is issued in time for us to consider the provisions of the conservation plan prior to our final rulemaking, we propose to exclude these lands. If the northern spotted owl provisions of the conservation plan are finalized, and the permit is issued prior to our final rulemaking, we propose to exclude these lands. The SDS Company LLC and Broughton Lumber Company collectively manage approximately 83,000 acres (33,589 ha) of forestland in Skamania and Klickitat counties in Washington, and Hood River and Wasco counties in Oregon. These lands provide some habitat for some northern spotted owl activity sites. The Service anticipates conservation benefits for northern spotted owls could be provided by completing a conservation plan with the companies on these lands.

Lands With Conservation Easements, Other Management Agreements, or Other Partnerships

California

California State Park Lands

We propose to exclude 164,672 ac (66,640 ha) of California State Park lands, as these lands are managed consistent with the conservation and recovery needs of the northern spotted owl.

Big River, Salmon Creek and Garcia River Forests

We propose to exclude the three forest tracts known as the Big River Forest (11,837 ac (4,790 ha)), Salmon Creek Forest (4,676 ac (1,892 ha)), and Garcia River Forest (23,780 ac (9,624 ha)) in western Mendocino County from the final critical habitat designation. The Big River and Salmon Creek Forests are in Subunit 2 and the Garcia Forest is in Subunit 3 of the Redwood Coast CHU. The Garcia River Forest is in a key location for local and regional habitat connectivity. The three tracts were recently acquired by The Conservation Fund (TCF); conservation easements on these tracts are held by The Nature Conservancy (TNC). TCF maintains forest certifications under the Forest Stewardship Council and the Sustainable Forestry Initiative programs; and is initiating carbon sequestration certification through the California Climate Action Registry. TCF has completed Integrated Resource Management Plans (IRMPs) for all three tracts in conjunction with the forest certification programs. Under the IRMPs, the northern spotted owl is identified as an indicator species for assessing ecosystem change and for guiding adaptive management strategies. Due to the history of intensive forest harvesting under previous owners, younger forest age classes are over-represented in current timber inventories; though there is enough suitable breeding habitat to support at least 17 owl activity sites on the three tracts combined. Forest management and carbon storage goals over the next several decades are to expand the standing forest inventory through reliance on uneven-aged silviculture and constrained harvest levels. Combined with the current inventory picture, this management direction indicates, at minimum, that there will be substantial recruitment of suitable foraging habitat on these lands over the next 2 to 3 decades.

Mendocino Redwood Company Proposed Habitat Conservation Plan

We may consider excluding forest lands owned and managed by the Mendocino Redwood Company in the Redwood Coast CHU in California. The company is in the process of negotiating a multispecies terrestrial and aquatic HCP and Natural Communities Conservation Plan with the Service and with National Marine Fisheries Service. In our best estimate, this process will not be completed before the final critical habitat rule is issued. However, if the spotted owl provisions of the HCP are finalized, and the permit is issued prior to our final rulemaking, we may consider these lands for exclusion in the final critical habitat designation. The Mendocino Redwood Company manages 232,584 ac (94,123 ha) of forestland in Mendocino and Sonoma counties and continuously monitors more than 160 northern spotted owl activity sites. Based on our regional analysis of habitat suitability and connectivity, company lands contain an abundance of high-quality owl habitat. Three management units on this ownership, Rockport, Garcia and Annapolis, are in key locations for regional habitat connectivity.

Usal Forest

We propose to exclude the forest tract known as Usal Forest in northwestern Mendocino County, in Subunit 2 of the Redwood Coast CHU from the final critical habitat designation. The tract is owned by the Redwood Forest Foundation, Inc. (RFFI, non-profit), and is under a conservation easement is held by The Conservation Fund. On-the-ground management is carried out by the Campbell Group, LLC. RFFI and Campbell Group have issued a draft northern spotted owl management plan, which is under review by the California Department of Forestry and Fire Protection. The foundation has only recently acquired the land, but they have begun two initiatives, one for forest certification with the Forest Stewardship Council program, and another for certification of carbon sequestration through the California Climate Action Registry. The Usal Forest is approximately 50,000 ac (20,235 ha) and includes approximately 20 northern spotted owl activity sites under continuous monitoring. There are substantial amounts of high-quality owl habitat and the tract is in a key location for local and regional habitat connectivity. Among the conservation measures in the draft management plan are provisions for continued monitoring of owl activity sites, reporting of the monitoring results to State agencies and the Service, establishment of mapped polygons of suitable habitat around each activity site wherein no timber harvest or limited timber harvest may occur, and introduction of silvicultural practices designed to maintain or improve habitat suitability within northern spotted owl nesting, roosting, and foraging areas.

Van Eck Forest Foundation

The Van Eck Forest is discussed in detail under Safe Harbor Agreements. This land is also under a conservation easement held by the Pacific Forest Trust.

State of Oregon

The Oregon Department of Forestry (ODF) collectively manages about 700,000 ac (283,290 ha) in the Tillamook, Clatsop, and Elliott State Forests (co-managed with Oregon Department of State Lands) in addition to other parcels in western Oregon, and we are proposing approximately 228,733 ac (92,565 ha) of these lands as critical habitat for the northern spotted owl. The Tillamook and Clatsop State Forests are managed under the criteria contained within the Northwestern Oregon Forest Management Plan (revised April 2010). ODF is in the process of withdrawing from the 1995 Elliott State Forest Habitat Conservation Plan due to an inability to develop a revised HCP because of disagreements related to salmonid management. The Elliott State Forest Management Plan, which was approved by the Board of Forestry and State Land Board in the fall of 2011, covers the Elliott State Forest and scattered tracts in Coos, Curry, and Douglas Counties. These plans are available online at *http://egov.oregon.gov/ODF/STATE_FORESTS/Forest_Management_Plans.shtml*).

State forest management plans are long-range plans that provide policy goals and strategies under which more specific district implementation plans and annual operation plans are developed. We are currently working with ODF to understand how portions of these State forest lands are currently managed to contribute to the long-term maintenance and enhancement of spotted owls, in alignment with the recommendations in the Revised Recovery Plan (USFWS 2011, pp. III–57 to III–58). In this context, ODF has recently provided the Service with maps and information about ODF's plans to develop structurally complex habitat on portions of the State Forest's landscape. Work is currently underway between the Service and ODF to evaluate this

information, which may form the basis for adjustments in the final designation of critical habitat. The continued implementation of ODF's forest management plans, and commitments to adaptive management improvements over time articulated in these plans, are the State of Oregon's voluntary contributions to spotted owl recovery on forestlands managed by the ODF. If future management is sufficient to meet the standards of exclusion from designated critical habitat as described in this proposed revised rule, we will consider excluding some or all of these lands from the final designation of critical habitat.

State of Washington

Washington State Park Lands

We propose to exclude 104 ac (42 ha) of Washington State Park lands, as these lands are managed consistent with the conservation and recovery needs of the northern spotted owl.

Scofield Corporation Deed Restriction (Formerly Habitat Conservation Plan)

We propose to exclude lands that were formerly covered under the Scofield Corporation HCP in the East Cascades North CHU from the final critical habitat designation. This HCP for 40 ac (16 ha) of forest lands in Chelan County, Washington, covered forest-management activities and the associated incidental take permit included only the northern spotted owl. The HCP provided for mitigation and minimization measures by retaining a buffer of intact habitat, implementing selective timber-harvest practices, and placing a perpetual deed restriction on the property permanently prohibiting further timber harvest or tree removal except with the express written consent of the U.S. Fish and Wildlife Service. These measures were designed to ensure the retention of some owl habitat and approximately 72 percent of the total number of trees after harvest. Although the permit issued under this HCP in 1996 had a duration of only 1 year (noticed February 20, 1996 (61 FR 6381), and issued April 3, 1996), as provided in the permit terms, the lands under this HCP are now covered by a deed restriction for those lands in perpetuity.

Federal Lands

As noted above, Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their programs in furtherance of the Act and to utilize their authorities to carry out programs for the conservation of endangered and threatened species. We consider the development and implementation of land management plans by Federal agencies to be consistent with this statutory obligation under section 7(a)(1) of the Act. Therefore, Federal land management plans, in and of themselves, are generally not an appropriate basis for excluding essential habitat. Some broad-scale Federal resource management plans (e.g., the Northwest Forest Plan) provide conservation benefits to the northern spotted owl as well as all other species within the plan boundaries. In addition, in some places, Federal land management agencies may actively manage for the northern spotted owl and conduct specific conservation actions for the species. Congressionally reserved natural areas (e.g., wilderness areas, national parks, national scenic areas) were not included in the 1992 and 2008 northern spotted owl critical habitat designations. In this rulemaking, we propose to exclude 2,631,736 ac (1,065,026 ha) of Congressionally reserved natural areas from the final critical habitat designation. We request public comment regarding existing specific conservation actions that Federal land management agencies have or are currently implementing on their lands, and will take this information into account when conducting our exclusion analysis in the final critical habitat designation.

Consideration of Indian Lands

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (November 6, 2000, and as reaffirmed November 5, 2009); and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on Indian lands may be better managed under Indian authorities, policies, and programs than through Federal regulation where Indian management addresses the conservation needs of listed species. In addition, such designation may be viewed by tribes as unwarranted and an unwanted intrusion into Indian self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

In developing proposed revised critical habitat designation for the northern spotted owl, we considered inclusion of some Indian lands. As described in the above section Criteria Used to Identify Critical Habitat, and detailed in our supporting documentation (Dunk *et al.* 2012, entire), we evaluated numerous potential habitat scenarios to determine those areas that are essential to the conservation of the northern spotted owl. In all cases, we assessed the effectiveness of the habitat scenario under consideration in terms of its ability to meet the recovery goals for the species. Furthermore, the habitat scenarios under consideration included a comparison of different prioritization schemes for landownership; we prioritized areas under consideration for critical habitat such that we looked first to Federal lands, followed by State, private, and Tribal or Indian lands. Indian lands are those defined in Secretarial Order 3206 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997), as: (1) Lands held in trust by the United States for the benefit of any Indian tribe or individual; and (2) lands held by any Indian Tribe or individual subject to restrictions by the United States against alienation. In evaluating Indian lands under consideration as potential critical habitat for the northern spotted owl, we further considered the directive of Secretarial Order 3206 that stipulates ''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.''

Although some Indian lands identified in our habitat modeling demonstrated the potential to contribute to the conservation of the northern spotted owl, our analysis did not suggest that these areas were essential to conserve the northern spotted owl. This determination was based on our relative evaluation of the various habitat scenarios under consideration; if the population performance results from our habitat modeling indicated that we could meet the recovery goals for the species without relying on Indian lands, we did not consider the physical and biological features on those lands, or the lands themselves, to be essential to the conservation of the species, therefore they did not meet our criteria for inclusion in critical habitat. Our

evaluation of the areas under consideration for designation as critical habitat indicated that we could achieve the conservation of the northern spotted owl by limiting the designation of revised critical habitat to other lands. Therefore, no Indian lands are included in the proposed revised designation of critical habitat.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule and appropriate supporting materials that were used in its development that may have not otherwise undergone peer review. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat. All sources we have relied upon in the development of this proposed rule, including all published peer-reviewed literature and the Revised Recovery Plan, are cited and full references are provided for download at *http://www.regulations.gov,* or in hard copy upon request (see **FOR FURTHER INFORMATION CONTACT**).

In addition, we note that the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011), which provides the recovery criteria and habitat modeling framework upon which this proposed revised designation of critical habitat is based, in part, was subject to a rigorous peer review process. The Wildlife Society and the American Ornithologists' Union/Society for Conservation Biology (jointly) provided peer review of the draft Revised Recovery Plan. We also received reviews from experts on our Scientific Review Committee, as well as numerous unsolicited reviews from other specialists and organizations, that contributed to the scientific integrity of the habitat modeling framework presented in Appendix C of the Revised Recovery Plan.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866/13563

The Office of Management and Budget (OMB) has determined that this rule is significant and has reviewed this proposed rule under Executive Order 12866 and 13563 (E.O. 12866 and E.O. 13563). OMB based its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

(2) Whether the rule will create inconsistencies with other Federal agencies' actions;

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or

(4) Whether the rule raises novel legal or policy issues.

Executive Order 13563 reaffirmed 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 where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. 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. This proposed rule has been developed in a manner consistent with these requirements and the Service is committed to respecting them in the development of the final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine whether a designation of critical habitat could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not

explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Under the Act, designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so would not result in any additional effects under the critical habitat provisions of the Act. However, there are some State laws that limit activities in designated critical habitat even where there is no Federal nexus. If there is a Federal nexus, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat.

A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Any existing and planned projects, land uses, and activities that could affect the proposed critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Federal agencies may need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding specific to this proposed revised designation of critical habitat. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

We do have a recent economic analysis that was completed for the 2008 designation of critical habitat for the northern spotted owl. Because this proposed revised designation of critical habitat on Federal, State, and private lands differs from the current designation in that the current designation is limited entirely to Federal lands, the previous economic analysis is of somewhat limited utility in informing our analysis of the potential impacts of the proposed designation on any small entities. In our previous economic analysis, we concluded that in areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the northern spotted owl. Federal agencies also must consult with us if their activities may affect critical habitat. The designation of critical habitat, therefore, could result in an additional economic impact due to the requirement to reinitiate consultation for ongoing Federal activities that could be transferred to a small business entity.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements that the Federal action agency may be required to consult with us on regarding their project's impact on the northern spotted owl and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant (potentially a small business) may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations under section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives.

These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units of the 2008 critical habitat, the types of Federal actions or authorized activities that were identified as potential concerns were:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of activities by the Fish and Wildlife Service under section 10(a)(1)(B) of the Endangered Species Act; and

(3) Activities involving other Federal actions (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency).

We determined that it was likely that a developer or other project proponent could modify a project or take measures to protect the northern spotted owl. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. We concluded that these measures were not likely to result in a significant economic impact to project proponents.

As noted above, this proposed revised designation of critical habitat for the northern spotted owl differs significantly from the current designation in terms of both scope and landownerships affected. Therefore, the Service has concluded that deferring the RFA until completion of the draft economic analysis specific to this proposed rulemaking is necessary to meet the purposes and requirements of the RFA. Deferring the RFA in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment. In the meantime, for the public's consideration, we have tentatively identified several categories of activities that we anticipate may potentially be affected by the proposed revised critical habitat; these activities include: (1) Timber management, (2) barred owl management and control, (3) northern spotted owl surveys and monitoring, (4) fire management, (5) linear projects (i.e., roads, pipelines, and powerlines), (6) restoration, (7) recreation, and (8) administrative costs associated with consultations under section 7 of the Act.

Determining the economic impacts of a critical habitat designation involves evaluating the ''without critical habitat'' baseline versus the ''with critical habitat'' scenario, to identify those effects expected to occur solely due to the designation of critical habitat and not from the protections that are in place due to the species being listed under the Act. Effects of a designation equal the difference, or the increment, between these two scenarios. Measured differences between the baseline (without critical habitat) and the designated critical habitat (with critical habitat) may include (but are not limited to) the economic effects stemming from changes in land or resource use or extraction, environmental quality, or time and effort expended on administrative and other activities by Federal landowners, Federal action agencies, and in some instances, State and local governments or private third parties. These are the ''incremental effects'' that serve as the basis for the economic analysis.

As a result of our preliminary evaluation, we expect that any potential incremental effects of the critical habitat designation would be due to: (1) An increased workload for action agencies and the Service to conduct re-initiated consultations for ongoing actions in newly designated critical habitat (areas proposed for designation that are 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 unoccupied critical habitat. As in the prior designation, we therefore expect any incremental costs of critical habitat to be borne primarily by Federal agencies, since the majority of incremental effects are associated with consultation costs under section of the Act. On private lands, we expect that for a proposed action to result in a finding of adverse modification (i.e., that it would likely substantially reduce the conservation value of spotted owl critical habitat to such an extent that it would affect the ability of critical habitat to serve its intended recovery role), it would likely have to significantly alter large areas or restrict spotted owl connectivity through such areas. In light of our history of consultations, we believe that an adverse-modification finding is unlikely. This is based on our experience that in over 20 years of conducting consultations on the spotted owl, we have never had such a case. Nonetheless, should this occur, to avoid adverse modification we would most likely recommend reducing the scale of impacts to spotted owl habitat in the vicinity of areas important for connectivity or near population strongholds. In this rare event, there would potentially be some cost to the landowner in terms of reduced potential harvest. However, in general, we anticipate that actions that promote ecological restoration and those that apply ecological forestry principles as described in the Revised Recovery Plan for the Northern Spotted Owl (USFWS 2011, pp. III–11 to III–41) and elsewhere in this document are likely to be consistent with the conservation of the northern spotted owl and the management of its critical habitat, therefore we expect any potential economic impacts of the designation to be minimized. These are only tentative conclusions, however; the comprehensive evaluation of the potential economic impacts of the proposed revised designation will be presented in our draft economic analysis, which will be made available for public comment subsequent to the publication of this proposed rule.

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. While this proposed rule to designate revised critical habitat for the northern spotted owl is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose

an enforceable duty upon State, local, or Indian 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 Indian 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 Indian 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 Indian governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because most of the lands in the proposed revised designation are under Federal or State ownership, and do not occur within the jurisdiction of small governments. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), we have determined that this proposed rule does not have direct federalism implications that would require a federalism summary impact statement; however, we are aware of the State level interest in this rule, and we both summarize below and explain in more detail in other parts of this package activities and responsibilities on Federal, State, and private lands.

From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. As explained in detail earlier, section 7(a)(2) of the Act requires Federal agencies—and only Federal agencies—to ensure that the actions they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. 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. However, in keeping with Department of the Interior and Department of Commerce policy and the federalism principals set forth in Executive Order 13132, we are requesting information from, and consulting with appropriate State resource agencies in Washington, Oregon, and California on the effect of the proposed revised designation of critical habitat. We will use this information to more thoroughly evaluate the probable economic effects of this proposed designation in our draft economic analysis, to inform the development of our final rule, and to consider the appropriateness of excluding specific areas from the final rule.

The proposed revision of critical habitat also is not expected to have substantial indirect impacts. As explained in more detail above, activities within the areas proposed to be designated as critical habitat are already subject to a broad range of requirements, including: (1) The various requirements of the Northwest Forest Plan, including those applicable to its Late Successional Reserves, Riparian Reserves, and ''survey and manage'' restrictions; (2) the prohibition against ''taking'' northern spotted owls under sections 4(d) and 9 of the Act; (3) the prohibition against Federal agency actions that jeopardize the continued existence of the northern spotted owl under section 7(a)(2) of the Act; (4) the prohibition against taking other Endangered Species Act listed species that occur in the area of the proposed critical habitat (e.g., salmon, bull trout, and marbled murrelets); and (5) the prohibition against Federal agency actions that jeopardize the continued existence of such other listed species. All of these requirements are currently in effect and will remain in effect after the final revision of critical habitat.

Some indirect impacts of the proposed rule on States are, of course, possible. Section 7(a)(2) of the Act requires Federal agencies (action agencies) to consult with the Service whenever activities that they undertake, authorize, permit, or fund may affect a listed species or designated critical habitat. States or local governments may

be indirectly affected if they require Federal funds or formal approval or authorization from a Federal agency as a prerequisite to conducting an action. In such instances, while the primary consulting parties are the Service and the Federal action agency, State and local governments may also participate in section 7 consultation as an applicant. It is therefore possible that States may be required to change project designs, operation, or management of activities taking place within the boundaries of the designation in order to receive Federal funding, assistance, permits, approval, or authorization from a Federal agency. Also, to the extent that the designation of critical habitat affects timber harvest amounts on Federal land, county governments that receive a share of the receipts from such harvests may be affected.

On the other side of the ledger, the designation of critical habitat may have some benefit to State and local governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. It may also assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

We will be examining these potential indirect impacts in connection with the forthcoming economic analysis that is being prepared pursuant to section 4(b)(2) of the Act, which will be made available for public comment prior to the finalization of this rule. We are committed to interactive management and will continue to consult with affected parties to minimize indirect impacts of this rulemakings on non-Federal entities.

We note, finally, that we intend to consult closely with State and local governments to ensure both that they understand the effects of such designation, and that we fully understand any concerns they may have. In particular, we will give careful consideration to any recommendations they may offer with respect to the exclusion of particular areas pursuant to section 4(b)(2) of the Act.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed revised critical habitat in accordance with the provisions of the Act. This proposed rule uses standard mapping conventions and identifies the elements of physical or biological features essential to the conservation of the northern spotted owl within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* in connection with designating critical habitat under the Act for the reasons outlined in a notice published 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 a challenge to the first rulemaking designating critical habitat for the northern spotted owl. *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). Nevertheless, given the scope of this particular proposed designation, the Service plans, as a matter of discretion and not as a legal requirement, to prepare an environmental assessment prior to making a final decision. We are in the process of drafting the environmental assessment, and plan to make it available at the same time that we release our draft economic analysis on this proposed rule; the comment period for the draft environmental assessment and the draft economic analysis will therefore run concurrently. One of the purposes in developing an environmental assessment is to determine whether an environmental impact statement may be warranted. However, based on our experience in the Tenth Circuit, where the Service routinely conducts NEPA analyses of critical habitat designations, to date we have found that environmental assessments have proven adequate.

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 the **ADDRESSES** section. 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.

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'' (November 6, 2000, and as reaffirmed November 5, 2009), 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. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination, and recognizes the need to consult with tribal officials when developing regulations that have tribal implications. 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 Indian culture, and to make information available to tribes. Even though we have determined that there are no Indian lands that meet the definition of critical habitat for the northern spotted owl, and

therefore no Indian lands are included in this proposal, we will continue to coordinate and consult with tribes regarding resources within the proposed revised designation that are of cultural significance to them.

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 Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package 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.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95(b) by revising critical habitat for ''Northern Spotted Owl *(Strix occidentalis caurina)*'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Northern Spotted Owl *(Strix occidentalis caurina)*

(1) Critical habitat units are depicted for the States of Washington, Oregon, and California on the maps below.

(2) Critical habitat for the northern spotted owl includes the following four primary constituent elements (PCEs) set forth in paragraph (2)(i) (PCE 1) through paragraph (2)(iv) (PCE 4) of this entry. Each critical habitat unit must include PCE 1 and PCE 2, 3, or 4:

(i) PCE 1: Forest types that may be in early-, mid-, or late-seral stages and that support the northern spotted owl across its geographical range. These forest types are primarily:

(A) Sitka spruce;

(B) Western hemlock;

(C) Mixed conifer and mixed evergreen;

(D) Grand fir;

(E) Pacific silver fir;

(F) Douglas-fir;

(G) White fir;

(H) Shasta red fir;

(I) Redwood/Douglas-fir (in coastal California and southwestern Oregon); and

(J) The moist end of the ponderosa pine coniferous forest zones at elevations up to approximately 3,000 ft (900 m) near the northern edge of the range and up to approximately 6,000 ft (1,800 m) at the southern edge.

(ii) PCE 2: Habitat that provides for nesting and roosting. In many cases the same habitat also provide for foraging (PCE (3)). Nesting and roosting habitat provides structural features for nesting, protection from adverse weather conditions, and cover to reduce predation risks for adults and young. This PCE is found throughout the geographical range of the northern spotted owl, because stand structures at nest sites tend to vary little across the spotted owl's range. These habitats must provide:

(A) Sufficient foraging habitat to meet the home range needs of territorial pairs of northern spotted owls throughout the year (or must occur in conjunction with this habitat); and

(B) Stands for nesting and roosting that are generally characterized by:

(*1*) Moderate to high canopy closure (60 to over 80 percent).

(*2*) Multilayered, multispecies canopies with large (20–30 inches (in) (51–6 centimeters (cm) or greater diameter at breast height (dbh)) overstory trees.

(*3*) High basal area (greater than 240 ft^2/acre; 55 m^2/ha).

(*4*) High diversity of different diameters of trees.

(*5*) High incidence of large live trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence).

(*6*) Large snags and large accumulations of fallen trees and other woody debris on the ground.

(*7*) Sufficient open space below the canopy for northern spotted owls to fly.

(iii) PCE 3: Habitat that provides for foraging, which varies widely across the northern spotted owl's range, in accordance with ecological conditions and disturbance regimes that influence vegetation structure and prey species distributions. Across most of the owl's range, nesting and roosting habitat is also foraging habitat, but in some regions northern spotted owls may additionally use other habitat types for foraging as well. The specific foraging habitat PCEs for the four ecological zones within the geographical range of the northern spotted owl are the following:

(A) *West Cascades/Coast Ranges of Oregon and Washington.*

(*1*) Stands of nesting and roosting habitat; additionally, owls may use younger forests with some structural characteristics (legacy features) of old forests, hardwood forest patches, and edges between old forest and hardwoods.

(*2*) Moderate to high canopy closure (60 to over 80 percent).

(*3*) A diversity of tree diameters and heights.

(*4*) Increasing density of trees greater than or equal to 31 in (80 cm) dbh increases foraging habitat quality (especially above 12 trees per ac (30 trees per ha)).

(*5*) Increasing density of trees 20 to 31 in (51 to 80 cm) dbh increases foraging habitat quality (especially above 24 trees per ac (60 trees per ha)).

(*6*) Increasing snag basal area, snag volume (the product of snag diameter, height, estimated top diameter, and including a taper function), and density of snags greater than 20 in (50 cm) dbh all contribute to increasing foraging habitat quality, especially above 10 snags/ha.

(*7*) Large accumulations of fallen trees and other woody debris on the ground.

(*8*) Sufficient open space below the canopy for northern spotted owls to fly.

(B) *East Cascades.*

(*1*) Stands of nesting and roosting habitat; in addition, stands composed of Douglas-fir and white fir/Douglas-fir mix.

(*2*) Mean tree size (quadratic mean diameter greater than 16.5 in (42 cm).

(*3*) Increasing density of large trees (greater than 26 in (66 cm)) and increasing basal area (the cross-sectional area of tree boles measured at breast height) increases foraging habitat quality.

(*4*) Large accumulations of fallen trees and other woody debris on the ground.

(*5*) Sufficient open space below the canopy for northern spotted owls to fly.

(C) *Klamath and Northern California Interior Coast Ranges.*

(*1*) Stands of nesting and roosting habitat; in addition, other forest types with mature and old-forest characteristics.

(*2*) Presence of conifer species such as incense-cedar, sugar pine, and Douglas-fir and hardwood species such as bigleaf maple, black oak, live oaks, and madrone, as well as shrubs.

(*3*) Forest patches within riparian zones of low-order streams and edges between conifer and hardwood forest stands.

(*4*) Brushy openings and dense young stands or low-density forest patches within a mosaic of mature and older forest habitat.

(*5*) High canopy cover (87 percent at frequently used sites).

(*6*) Multiple canopy layers.

(*7*) Mean stand diameter greater than 21 in (52.5 cm).

(*8*) Increasing mean stand diameter and densities of trees greater than 26 in (66 cm) increases foraging habitat quality.

(*9*) Large accumulations of fallen trees and other woody debris on the ground.

(*10*) Sufficient open space below the canopy for northern spotted owls to fly.

(D) *Redwood Coast.*

(*1*) Nesting and roosting habitat; in addition, stands composed of hardwood tree species, particularly tanoak.

(*2*) Early-seral habitats 6 to 20 years old with dense shrub and hardwood cover and abundant woody debris; these habitats produce prey, and must occur in conjunction with nesting, roosting, or foraging habitat.

(*3*) Increasing density of small-to-medium sized trees (10 to 22 in; 25 to 56 cm), which increases foraging habitat quality.

(*4*) Trees greater than 26 in (66 cm) in diameter or greater than 41 years of age.

(*5*) Sufficient open space below the canopy for northern spotted owls to fly.

(iv) PCE 4: Habitat to support the transience and colonization phases of dispersal, which in all cases would optimally be composed of nesting, roosting, or foraging habitat (PCEs 2 or 3), but which may also be composed of other forest types that occur between larger blocks of nesting, roosting, and foraging habitat. In cases where nesting, roosting, or foraging habitats are insufficient to provide for dispersing or nonbreeding owls, the specific dispersal habitat PCEs for the northern spotted owl may be provided by the following:

(A) Habitat supporting the transience phase of dispersal, which includes:

(*1*) Stands with adequate tree size and canopy closure to provide protection from avian predators and minimal foraging opportunities; and

(*2*) Younger and less diverse forest stands than foraging habitat, such as even-aged, pole-sized stands, if such stands contain some roosting structures and foraging habitat to allow for temporary resting and feeding during the transience phase.

(B) Habitat supporting the colonization phase of dispersal, which is generally equivalent to nesting, roosting and foraging habitat as described in PCEs 2 and 3, but may be smaller in area than that needed to support nesting pairs.

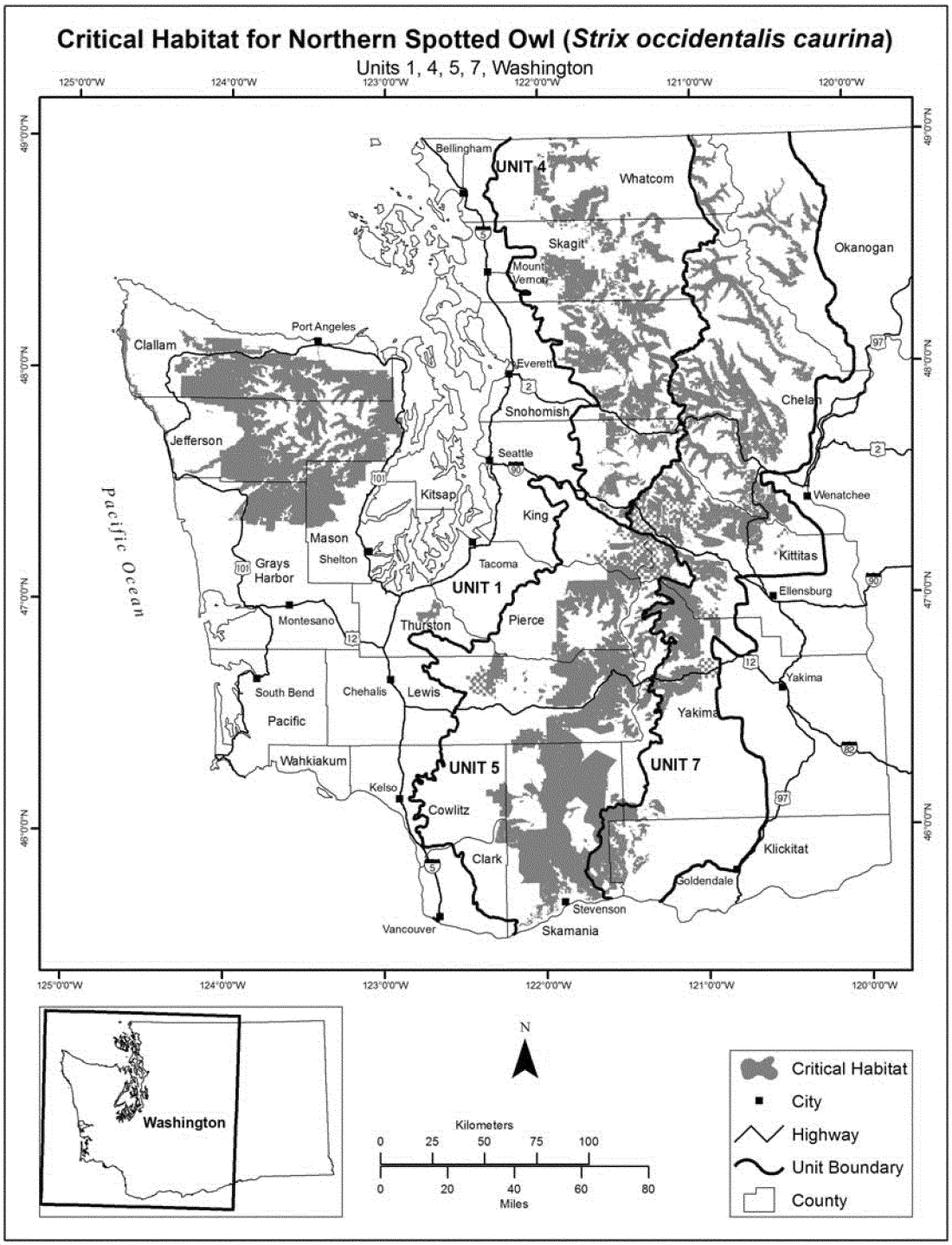
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, other paved areas, or surface mine sites) and the land on which they are located; developed recreation sites, administrative sites, or roadways, and the land on which they are located, including a safety buffer for hazard tree management; or any meadows, grasslands, oak woodlands, or aspen woodlands existing on the effective date of this rule and not containing the primary constituent elements.

(4) Critical habitat map units. The designated critical habitat units for the northern spotted owl are depicted on the maps below.

(5) **Note:** Index map of critical habitat units for the northern spotted owl in the State of Washington follows:

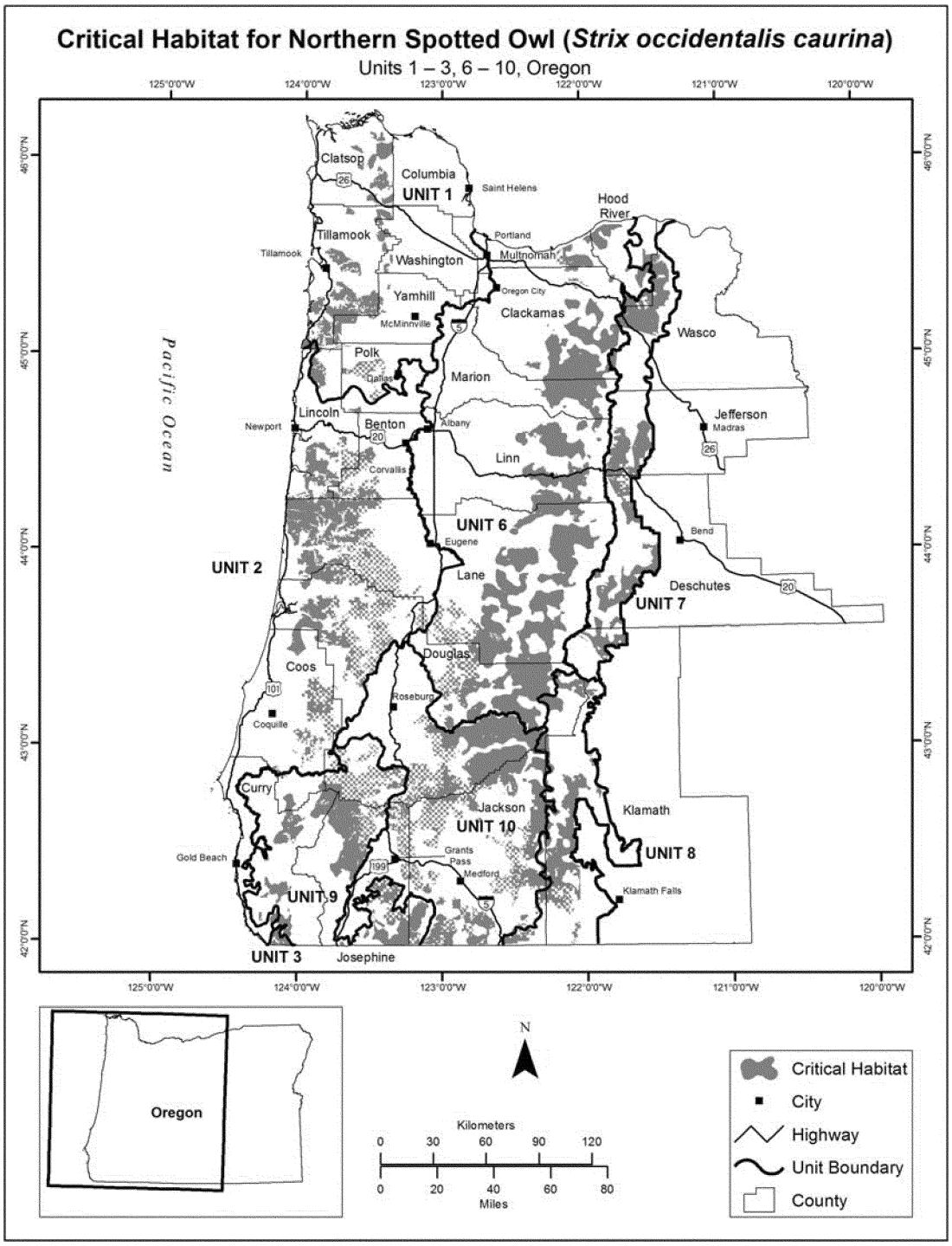
BILLING CODE 4310–55–P

Index Map of Critical Habitat Units in the State of Washington



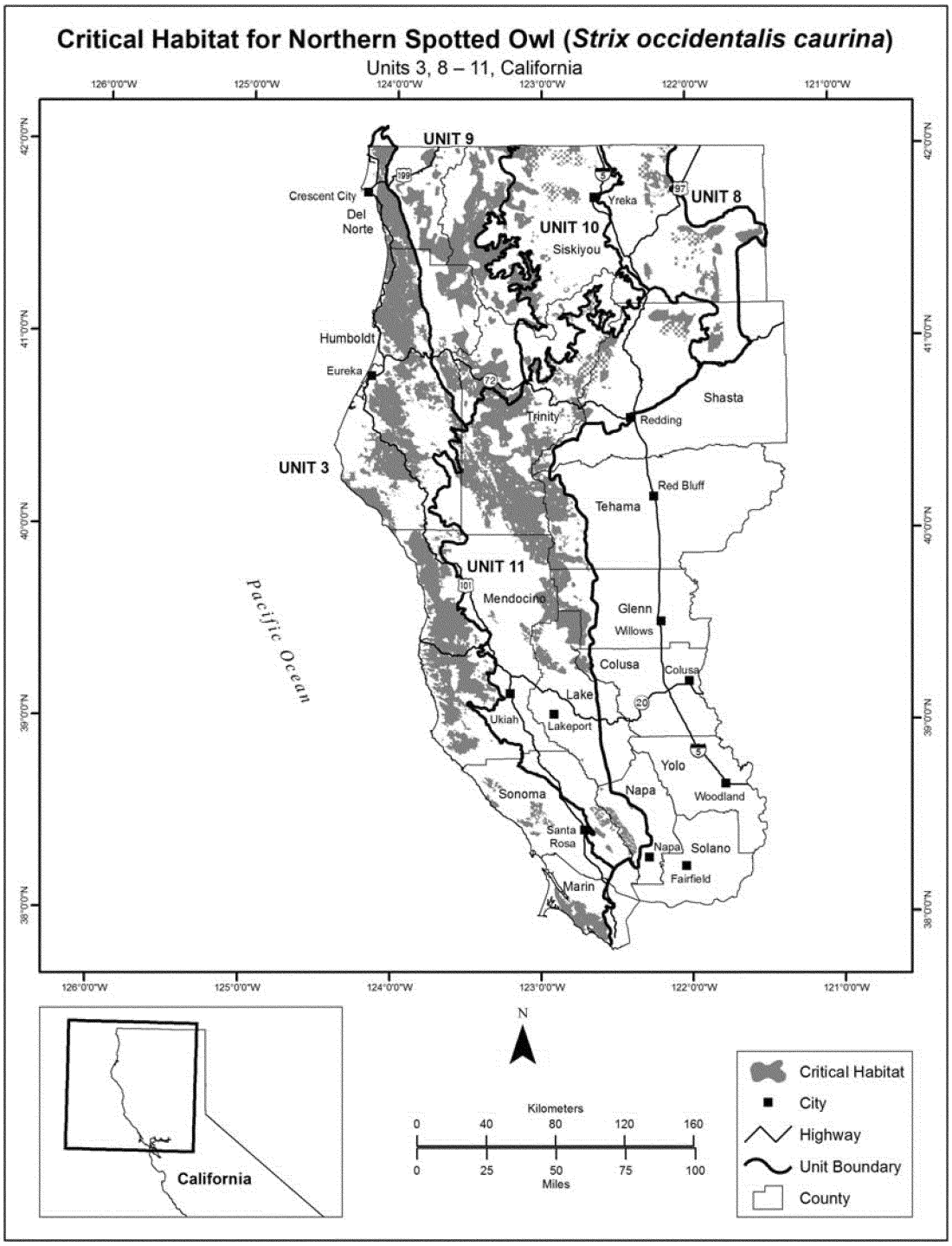
(6) **Note:** Index map of critical habitat units for the northern spotted owl in the State of Oregon follows:

Index Map of Critical Habitat Units in the State of Oregon



(7) **Note:** Index map of critical habitat units for the northern spotted owl in the State of California follows:

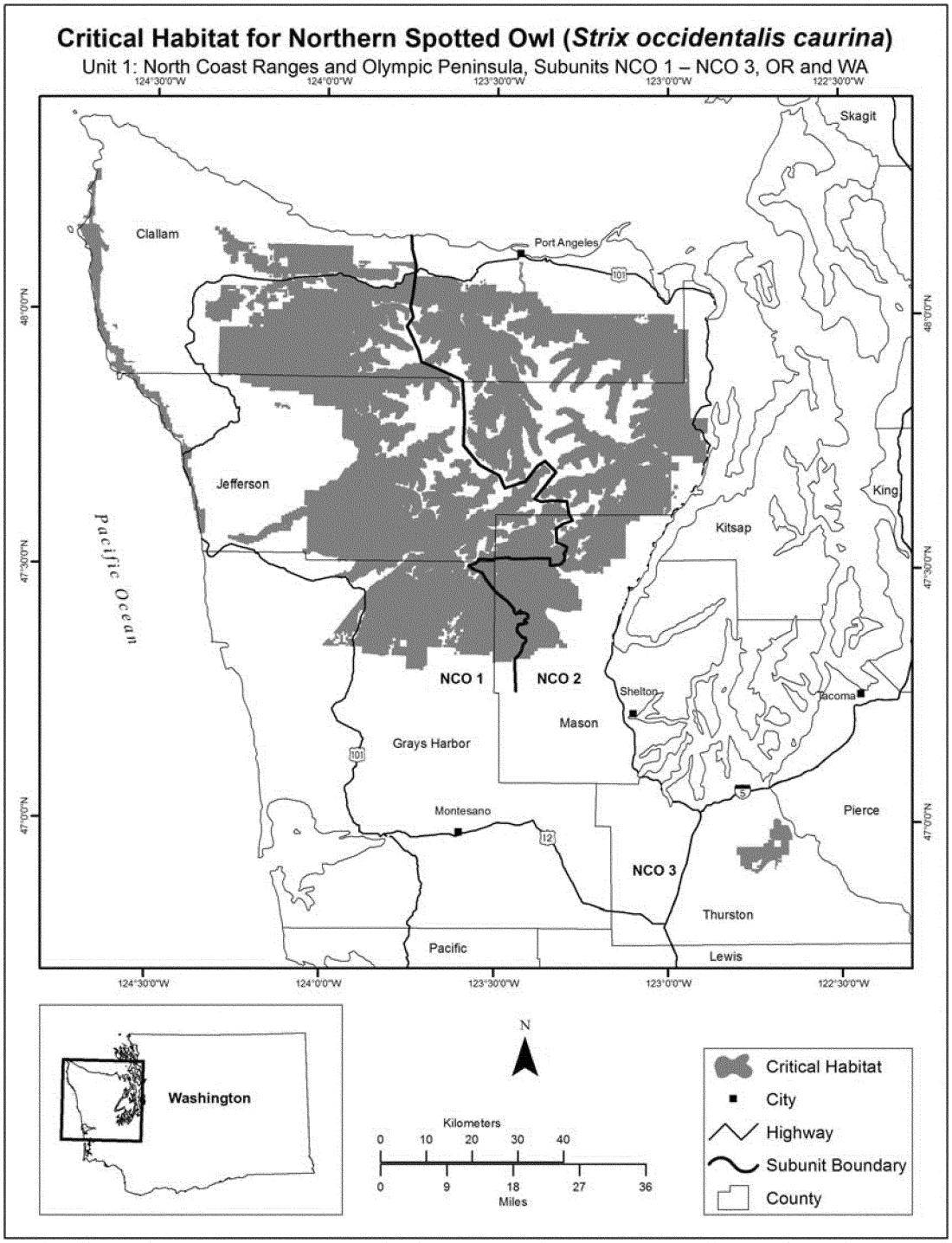
Index Map of Critical Habitat Units in the State of California

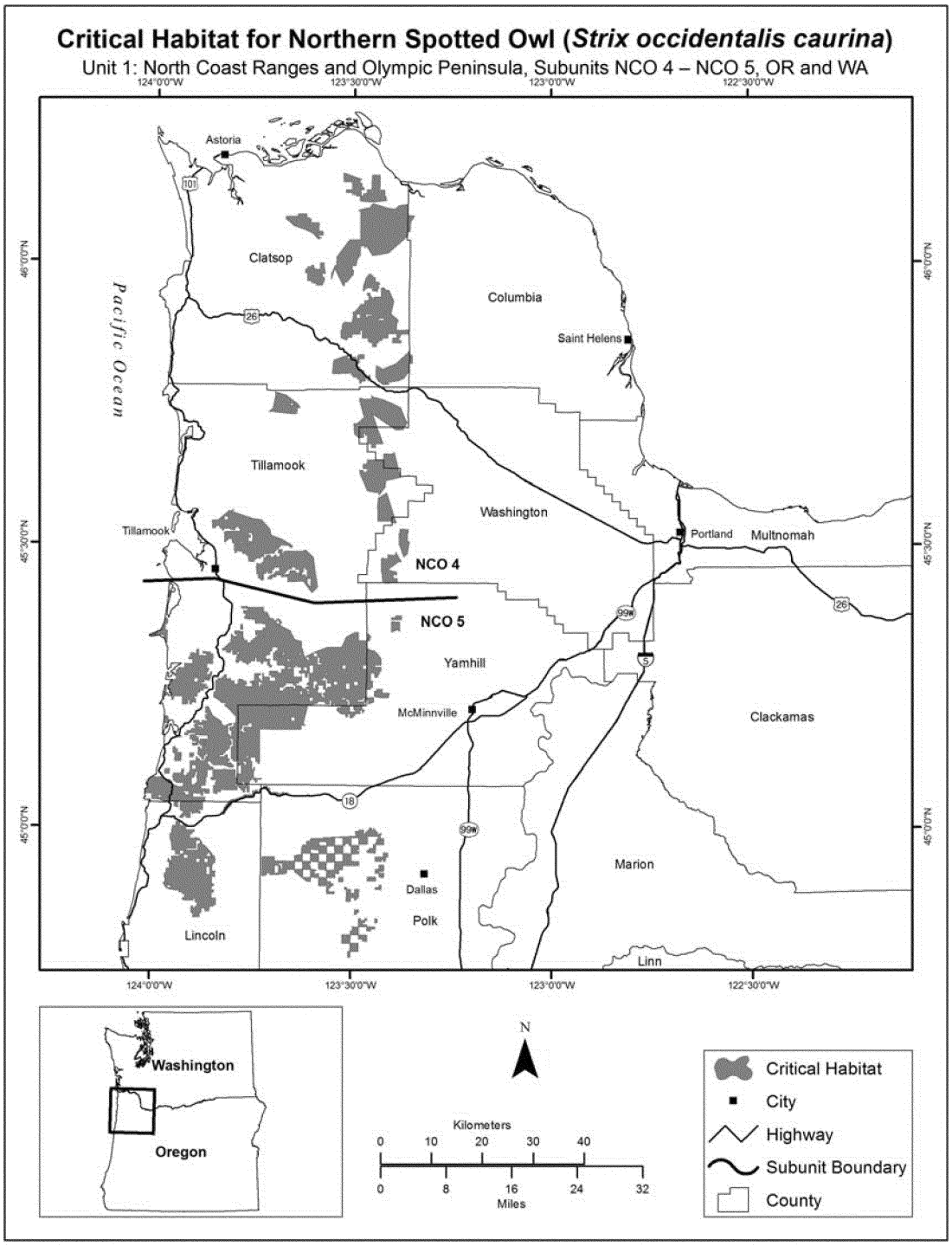


(8) Unit 1: North Coast Ranges and Olympic Peninsula, Oregon and Washington.

(i) [Reserved for textual description of Unit 1: North Coast Ranges and Olympic Peninsula, Oregon and Washington].

(ii) **Note:** Maps of Unit 1: North Coast Ranges and Olympic Peninsula, Oregon and Washington, follows:

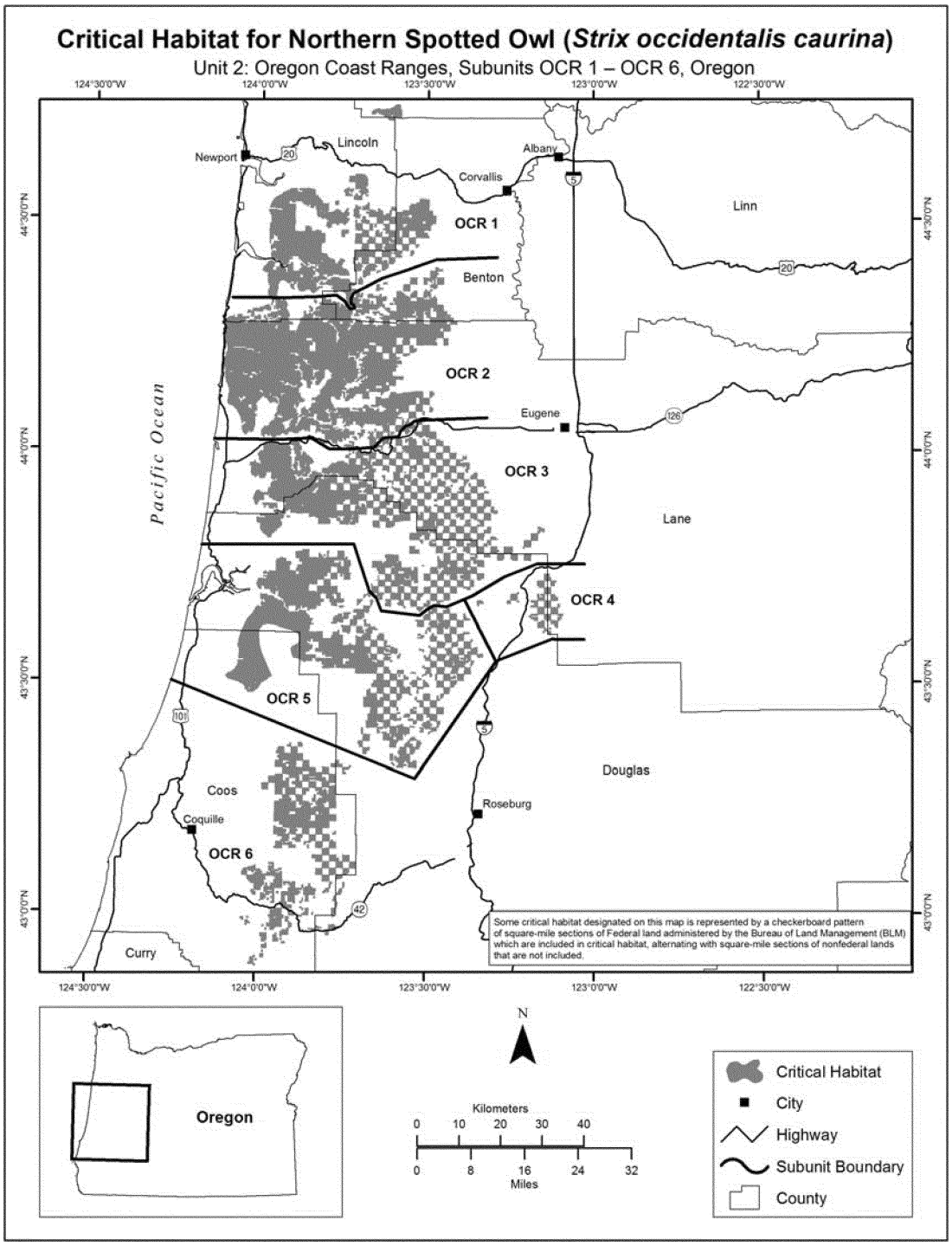



Critical Habitat for Northern Spotted Owl (*Strix occidentalis caurina*)
Unit 1: North Coast Ranges and Olympic Peninsula, Subunits NCO 4 – NCO 5, OR and WA
124°0'0"W
123°30'0"W
123°0'0"W
122°30'0"W
46°0'0"N
45°30'0"N
45°0'0"N
Astoria
101
Clatsop
Columbia
Saint Helens
26
Pacific Ocean
Tillamook
Washington
Tillamook
Portland
Multnomah
NCO 4
NCO 5
99W
5
Yamhill
McMinnville
Clackamas
18
Marion
Dallas
Polk
Lincoln
Linn
Washington
Oregon
N
Kilometers
0 10 20 30 40
0 8 16 24 32
Miles
Critical Habitat
City
Highway
Subunit Boundary
County

(9) Unit 2: Oregon Coast Ranges, Oregon.

(i) [Reserved for textual description of Unit 2: Oregon Coast Ranges, Oregon].

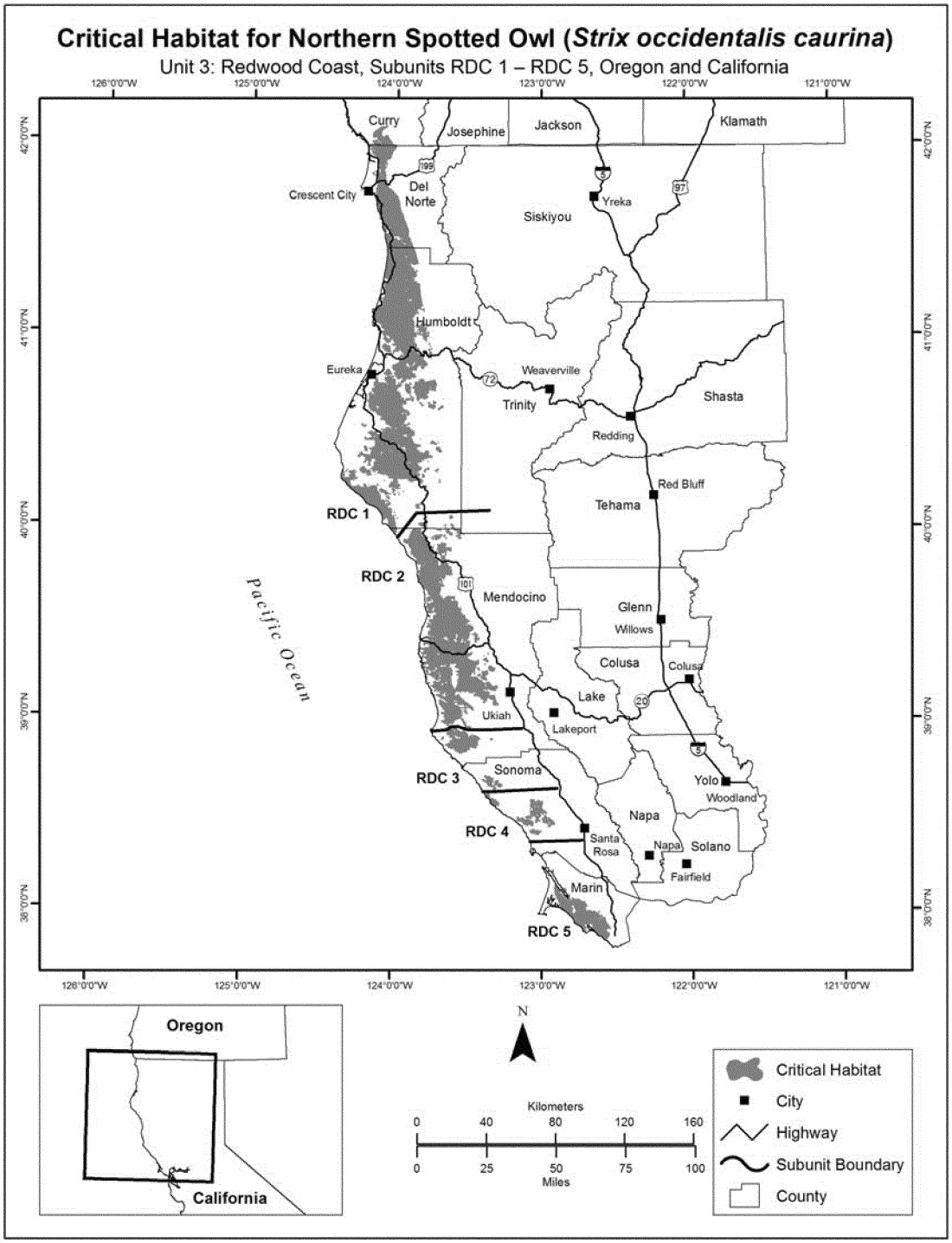
(ii) **Note:** Map of Unit 2, Oregon Coast Ranges, Oregon, follows:



(10) Unit 3: Redwood Coast, Oregon and California.

(i) [Reserved for textual description of Unit 3: Redwood Coast, Oregon and California]

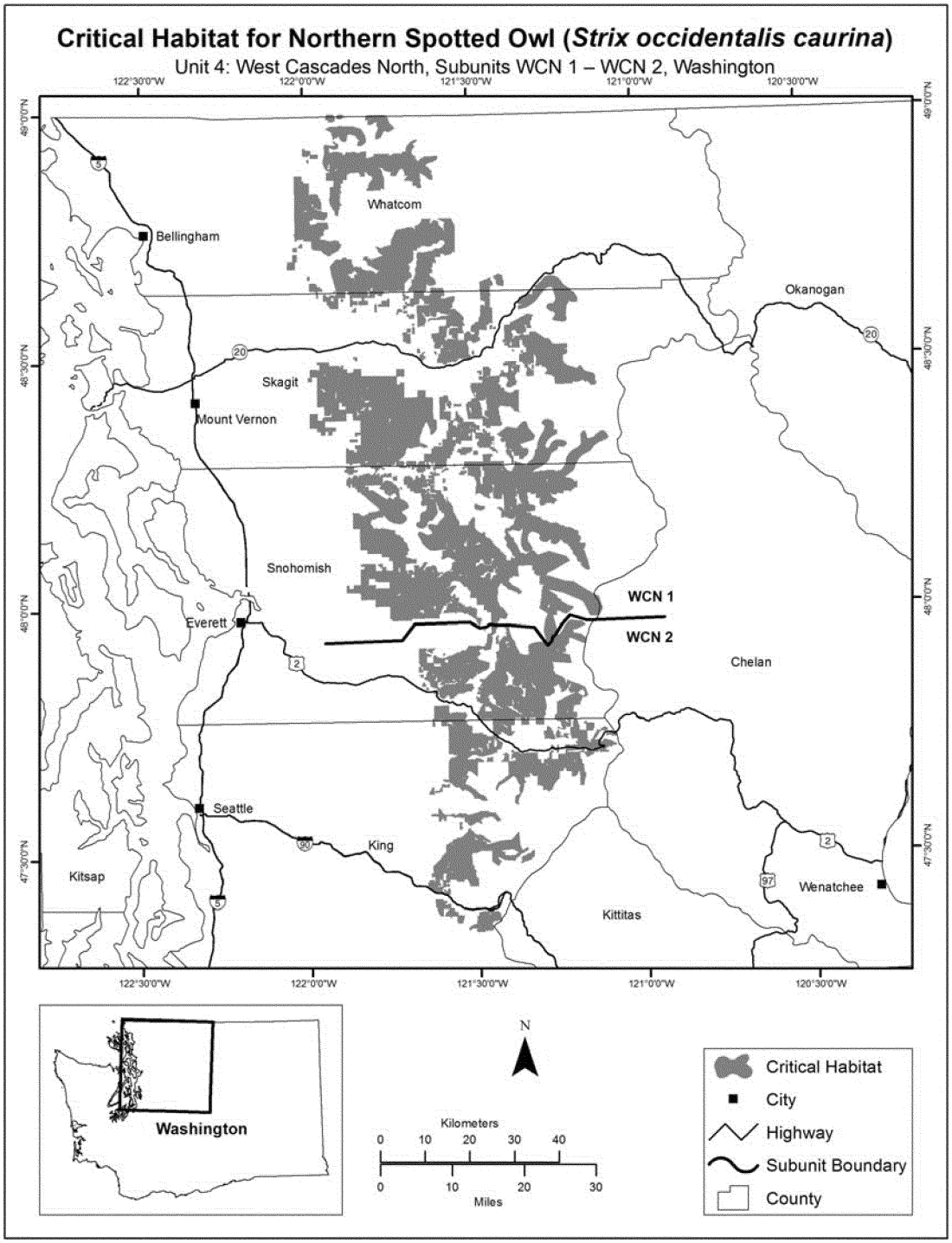
(ii) **Note:** Map of Unit 3, Redwood Coast, Oregon and California, follows:



(11) Unit 4: West Cascades North, Washington.

(i) [Reserved for textual description of Unit 4: West Cascades North, Washington].

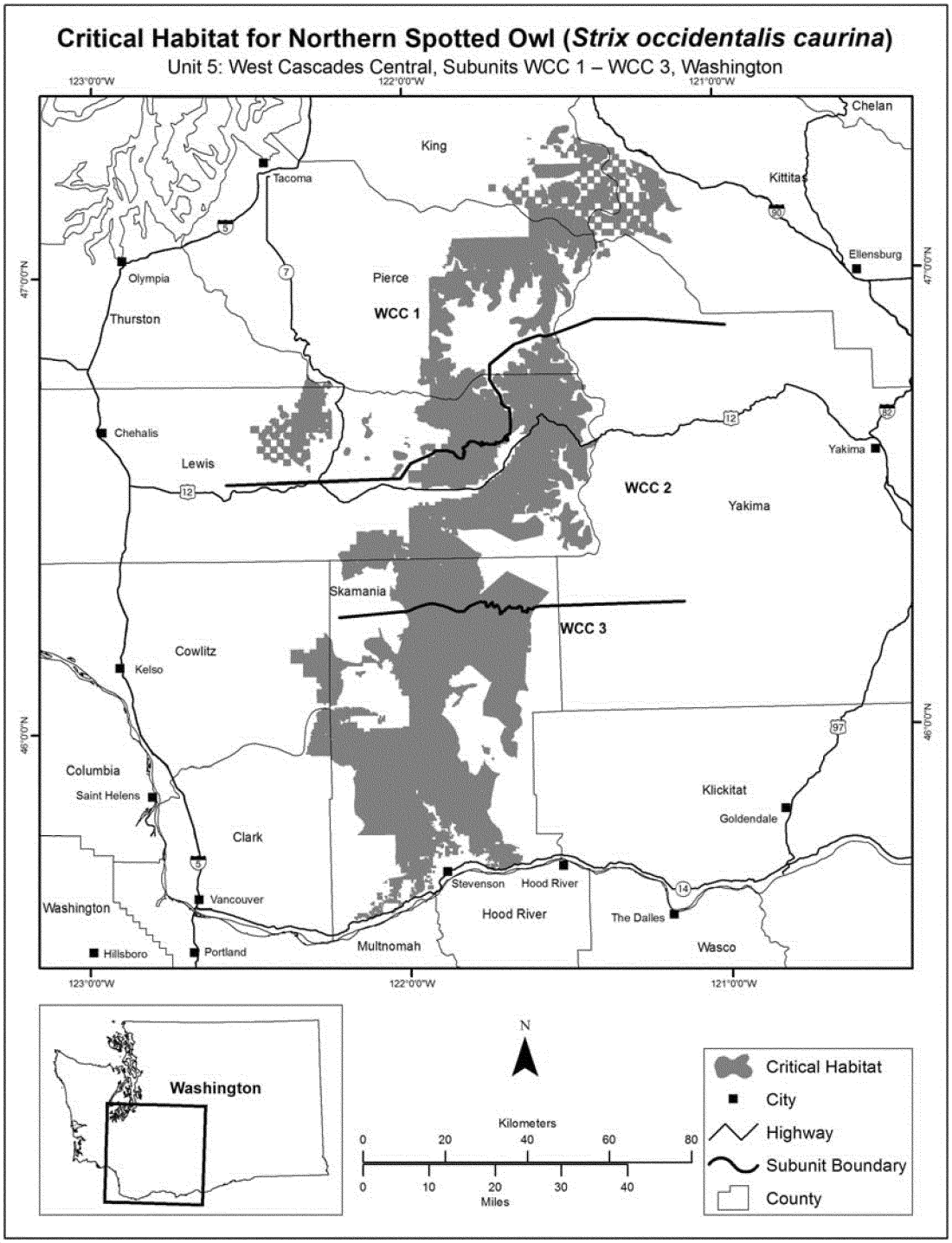
(ii) **Note:** Map of Unit 4, West Cascades North, Washington, follows:



(12) Unit 5: West Cascades Central, Washington.

(i) [Reserved for textual description of Unit 5: West Cascades Central, Washington].

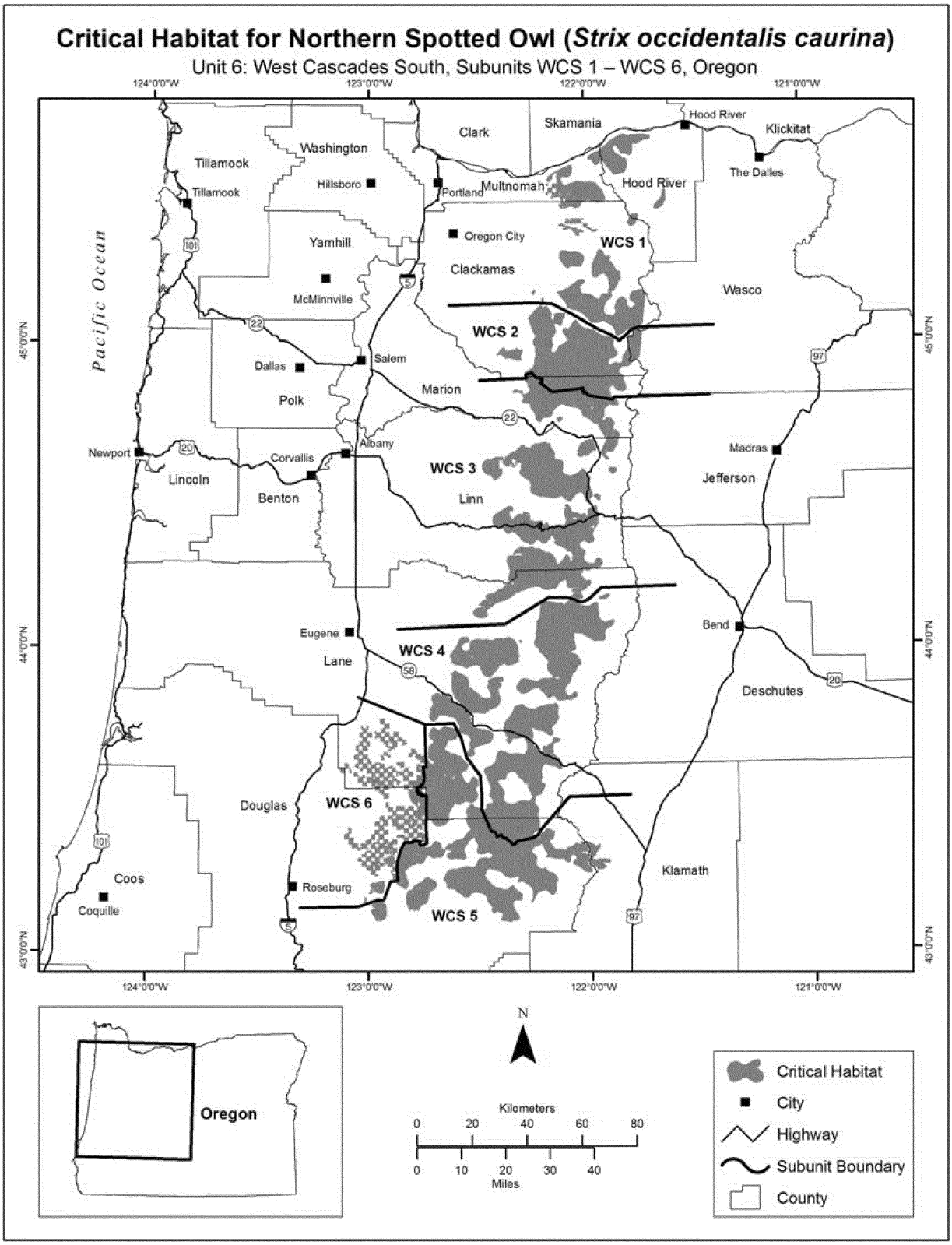
(ii) **Note:** Map of Unit 5, West Cascades Central, Washington, follows:



(13) Unit 6: West Cascades South, Washington.

(i) [Reserved for textual description of Unit 6: West Cascades South, Washington].

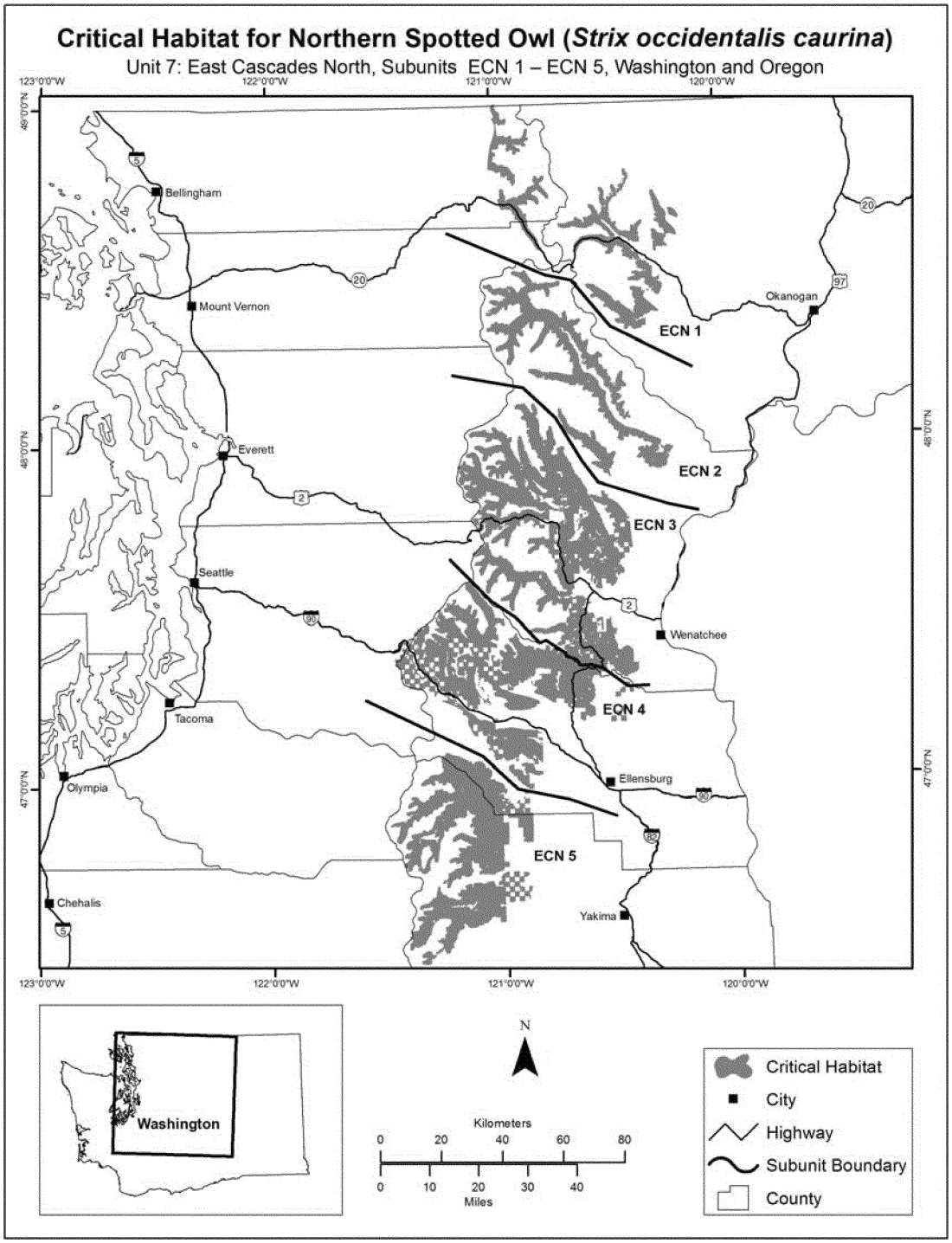
(ii) **Note:** Map of Unit 6, West Cascades South, Washington, follows:

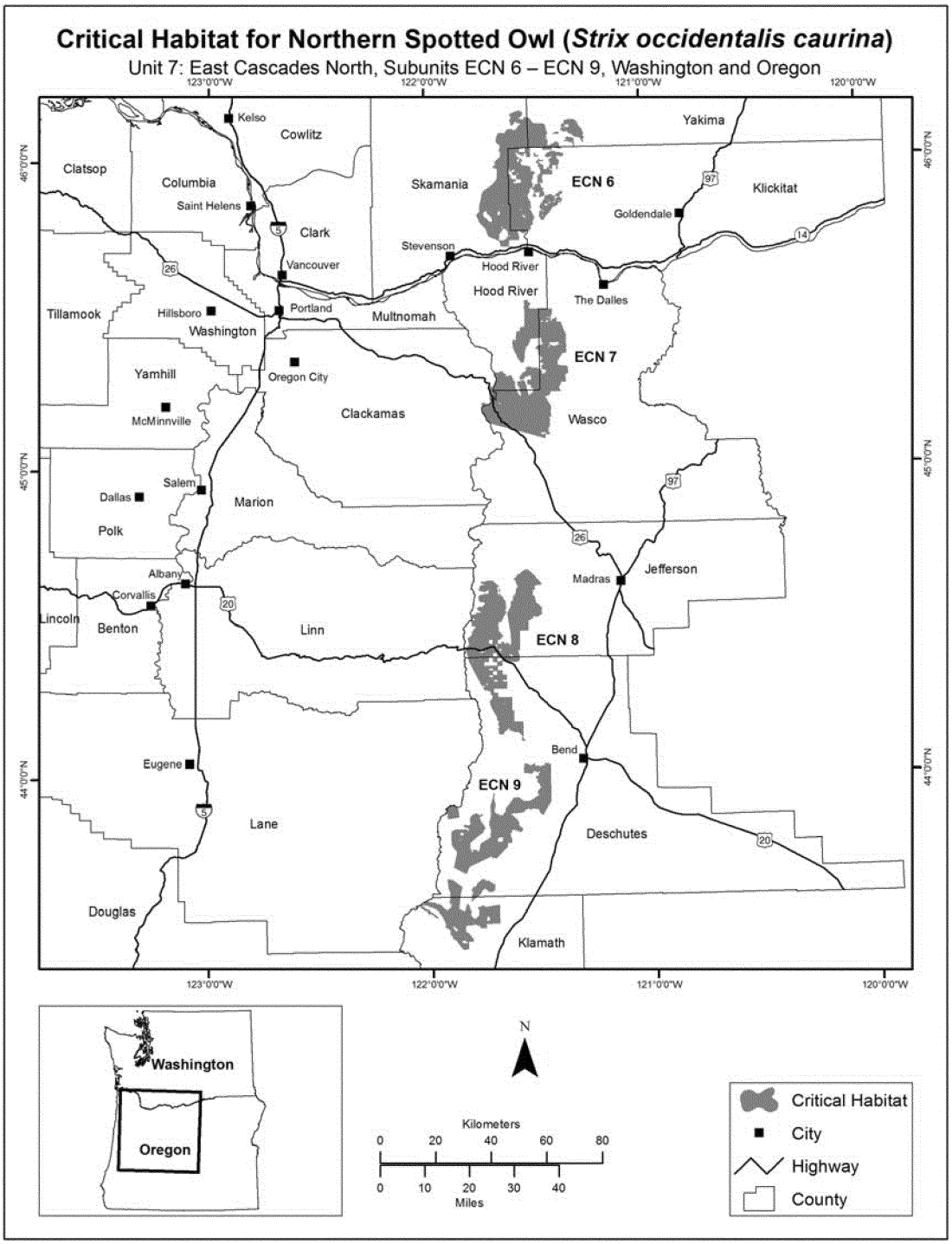


(14) Unit 7: East Cascades North, Washington and Oregon

(i) [Reserved for textual description of Unit 7: East Cascades North, Washington and Oregon].

(ii) **Note:** Maps of Unit 7, East Cascades North, Washington and Oregon, follow:




Critical Habitat for Northern Spotted Owl (Strix occidentalis caurina)
Unit 7: East Cascades North, Subunits ECN 6 – ECN 9, Washington and Oregon
123°0'0"W
122°0'0"W
121°0'0"W
120°0'0"W
46°0'0"N
45°0'0"N
44°0'0"N
Kelso
Cowlitz
Yakima
Clatsop
Columbia
Skamania
ECN 6
Klickitat
Saint Helens
Clark
Goldendale
Stevenson
Hood River
Vancouver
Hood River
The Dalles
Tillamook
Hillsboro
Portland
Multnomah
Washington
ECN 7
Yamhill
Oregon City
Clackamas
Wasco
McMinnville
Salem
Dallas
Marion
Polk
Jefferson
Madras
Albany
Corvallis
Lincoln
Benton
Linn
ECN 8
Bend
Eugene
ECN 9
Lane
Deschutes
Douglas
Klamath
Washington
Oregon
N
Kilometers
0 20 40 60 80
0 10 20 30 40
Miles
Critical Habitat
City
Highway
County

(15) Unit 8: East Cascades South, California and Oregon

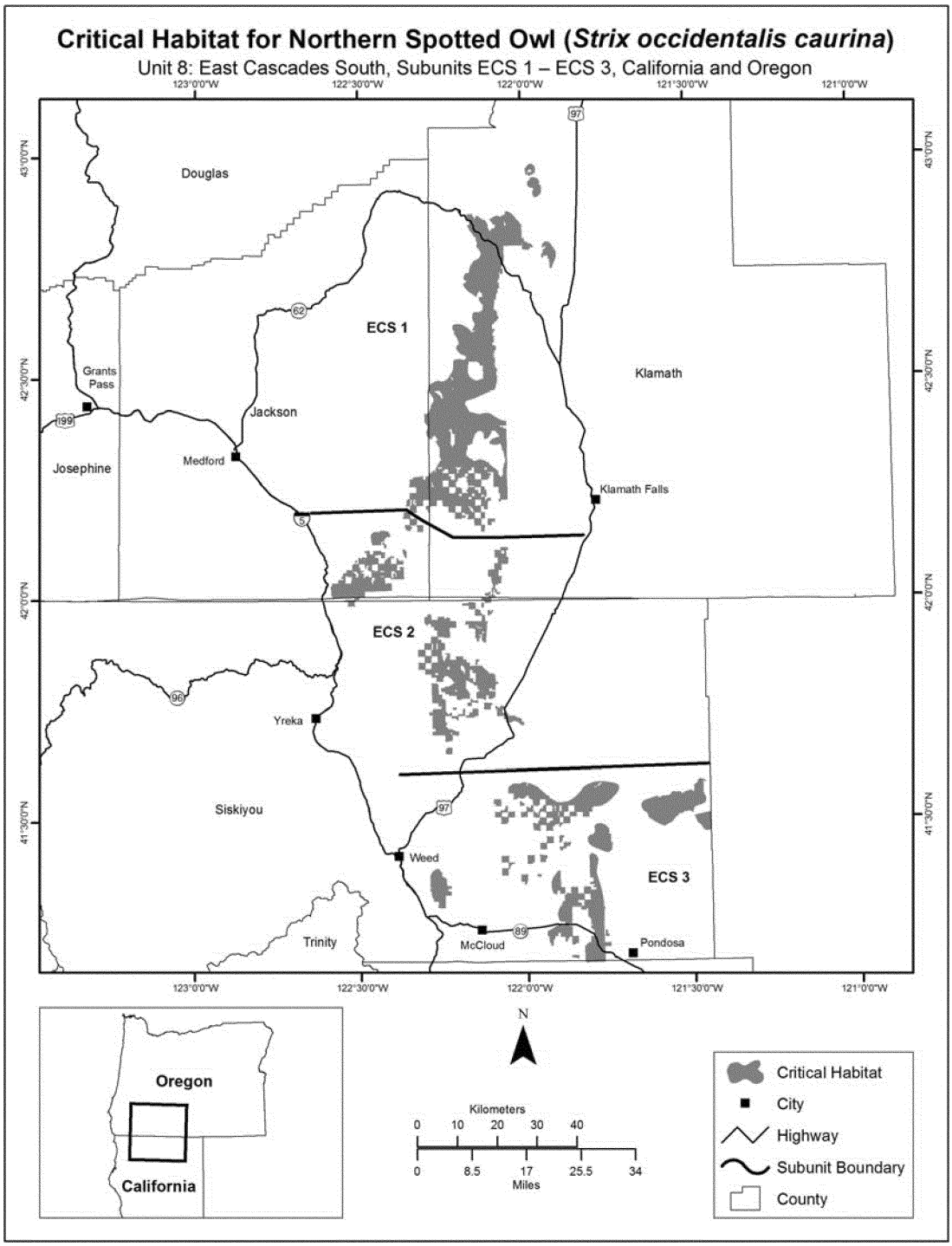
(i) [Reserved for textual description of Unit 8: East Cascades South, California and Oregon].

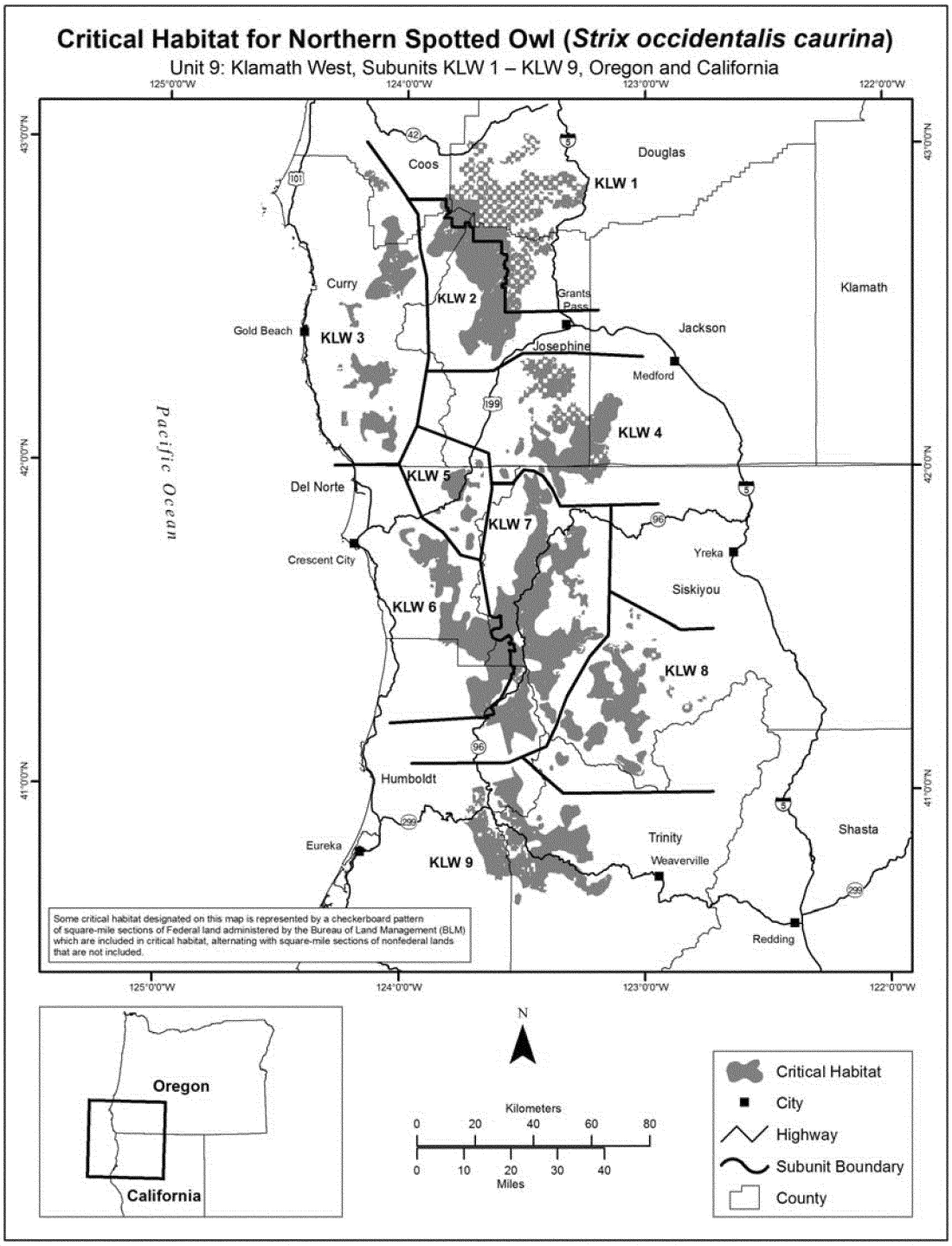
(ii) **Note:** Map of Unit 8, East Cascades South, California and Oregon, follows:

(16) Unit 9: Klamath West, Oregon and California.

(i) [Reserved for textual description of Unit 9: Klamath West, Oregon and California].

(ii) **Note:** Map of Unit 9: Klamath West, Oregon and California, follows:

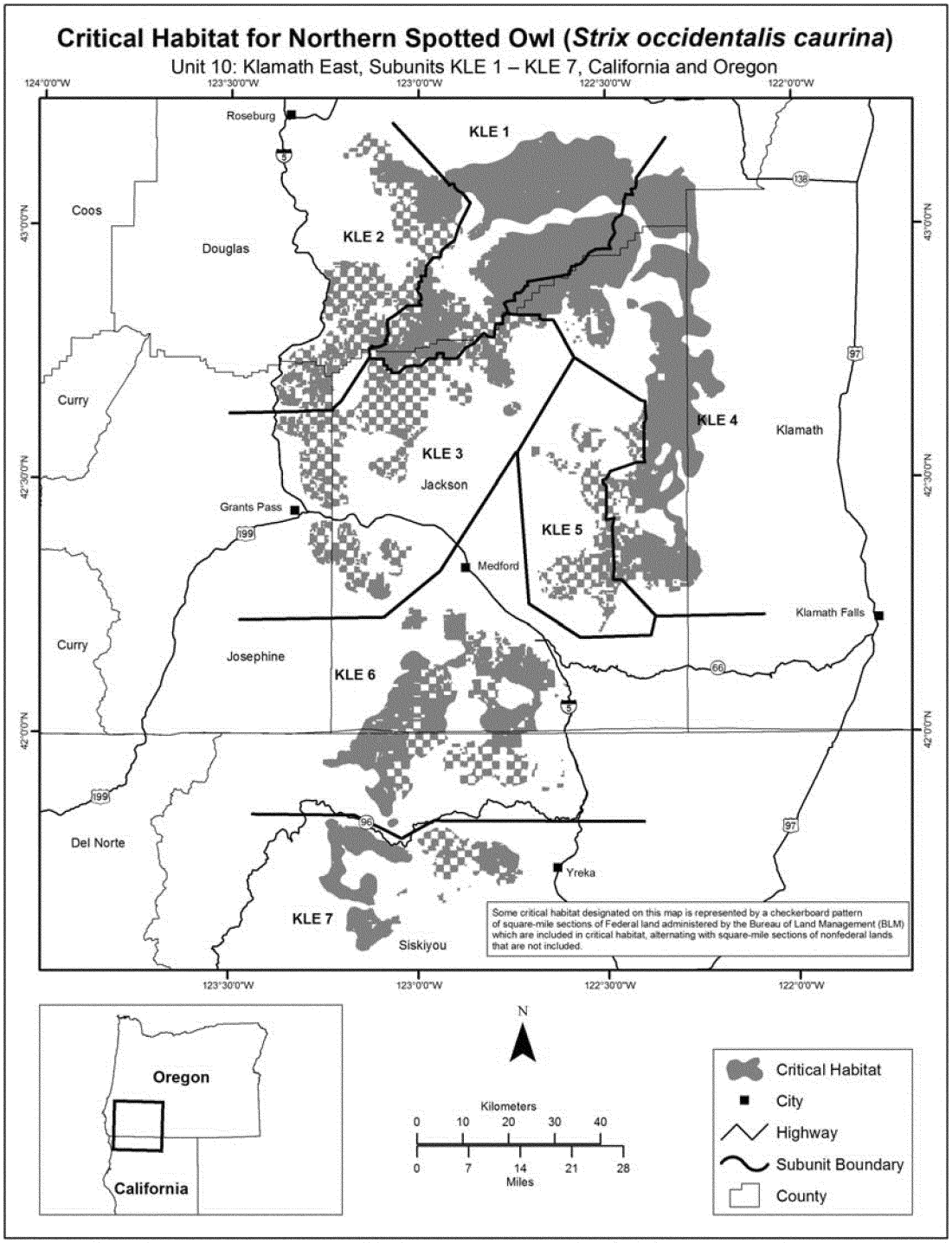



Critical Habitat for Northern Spotted Owl (Strix occidentalis caurina)
Unit 9: Klamath West, Subunits KLW 1 – KLW 9, Oregon and California
125°0'0"W
124°0'0"W
123°0'0"W
122°0'0"W
43°0'0"N
42°0'0"N
41°0'0"N
Coos
Douglas
KLW 1
Curry
KLW 2
Grants Pass
Klamath
Gold Beach
KLW 3
Jackson
Josephine
Medford
Pacific Ocean
KLW 4
Del Norte
KLW 5
KLW 7
Crescent City
Yreka
Siskiyou
KLW 6
KLW 8
Humboldt
Shasta
Trinity
Eureka
KLW 9
Weaverville
Redding
Some critical habitat designated on this map is represented by a checkerboard pattern of square-mile sections of Federal land administered by the Bureau of Land Management (BLM) which are included in critical habitat, alternating with square-mile sections of nonfederal lands that are not included.
Oregon
California
N
Kilometers
0 20 40 60 80
0 10 20 30 40
Miles
Critical Habitat
City
Highway
Subunit Boundary
County

(17) Unit 10: Klamath East, California.

(i) [Reserved for textual description of Unit 10: Klamath East, California].

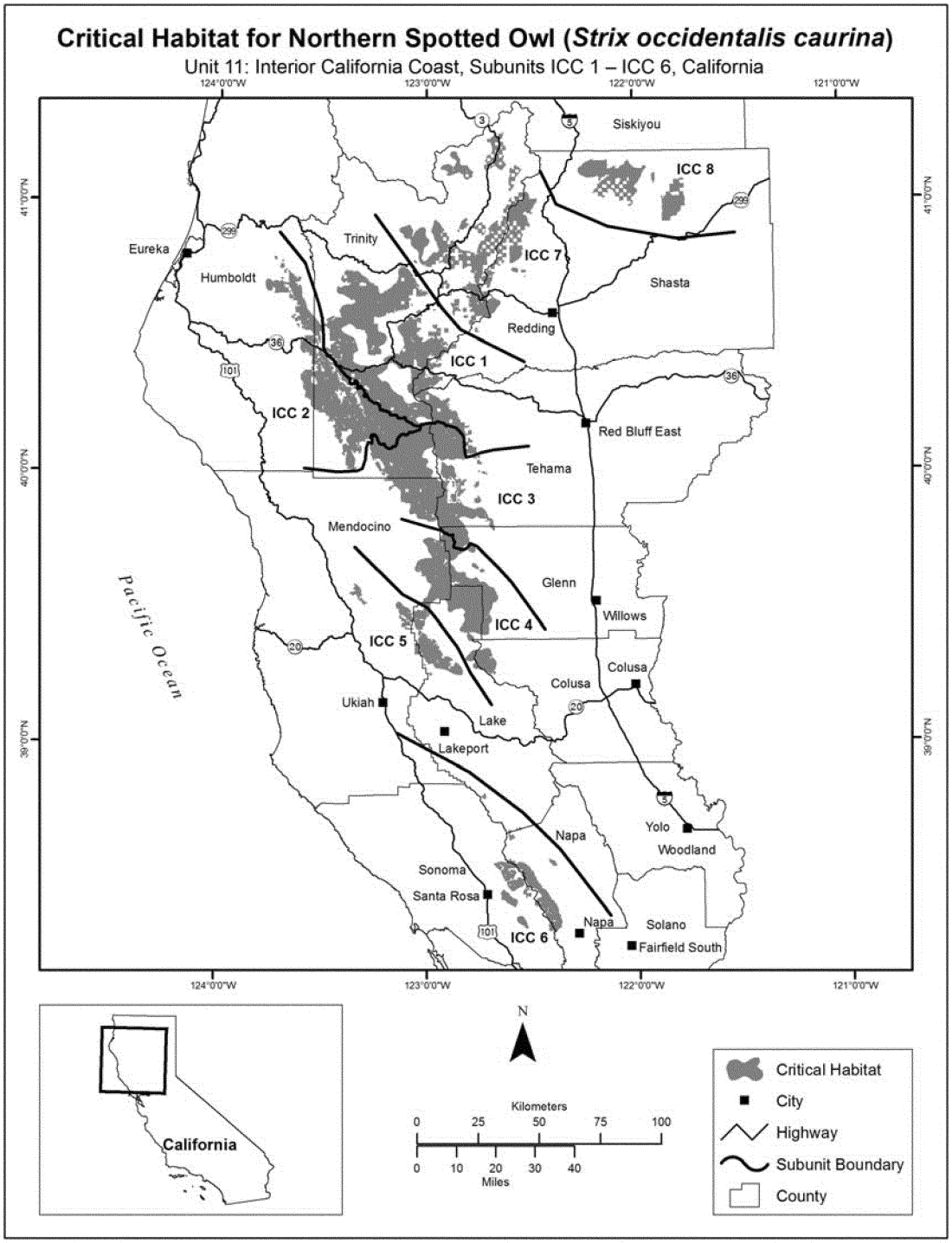
(ii) **Note:** Map of Unit 10: Klamath East, California, follows:



(18) Unit 11: Interior California Coast, California.

(i) [Reserved for textual description of Unit 11: Interior California Coast, California].

(ii) **Note:** Map of Unit 11: Interior California Coast, California, follows:



* * * * *

Dated: February 27, 2012.

Rachel Jacobsen,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–5042 Filed 3–7–12; 8:45 am]

BILLING CODE 4310–55–C

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Part III

Department of Health and Human Services

42 CFR Part 84

Approval Tests and Standards for Closed-Circuit Escape Respirators; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket NIOSH–005]

RIN 0920–AA10

Approval Tests and Standards for Closed-Circuit Escape Respirators

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Final rule.

SUMMARY: This final rule announces updated requirements that the National Institute for Occupational Safety and Health (NIOSH or Agency), located within the Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS or Department), will employ to test and approve closed-circuit respirators used for escaping atmospheres considered to be immediately dangerous to life and health, including such respirators required by the Mine Safety and Health Administration (MSHA) for use in underground coal mines. NIOSH and MSHA jointly review and approve this type of respirator used for mine emergencies under regulations concerning approval of respiratory protective devices. NIOSH also approves these respirators for use in other work environments where escape equipment may be provided to workers, such as on vessels operated by U.S. Navy and Coast Guard personnel. The purpose of these updated requirements is to enable NIOSH and MSHA to more effectively ensure the performance, reliability, and safety of CCERs.

DATES: This final rule is effective April 9, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 9, 2012.

FOR FURTHER INFORMATION CONTACT: Tim Rehak, NIOSH National Personal Protective Technology Laboratory (NPPTL), P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA, 15236; (412) 386–5200 (this is not a toll-free number). Information requests can also be submitted by email to *nioshdocket@cdc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

A. Introduction

A closed-circuit escape respirator (CCER) technically defined as a closed-circuit, self-contained breathing apparatus used for escape, is used in certain industrial and other work settings during emergencies to enable users to escape from atmospheres that can be immediately dangerous to life and health. The CCER, known in the mining industry as a self-contained self-rescuer, is used by miners to escape dangerous atmospheres in mines. It is also used by certain Navy and Coast Guard personnel, such as crews working below decks on vessels, where it is referred to as an emergency escape breathing device, and in the railroad industry, where it is known as an emergency escape breathing apparatus. To a lesser extent, it is also used by other workers who work underground or in confined spaces, such as in tunneling operations in the construction industry.

CCERs are commonly worn on workers' belts or stored in close proximity to be accessible in an emergency. They are relatively small respirators, typically the size of a water canteen, which employ either compressed oxygen with a chemical system for removing exhaled carbon dioxide from the breathing circuit, or a chemical that both provides a source of oxygen and removes exhaled carbon dioxide. Users re-breathe their exhalations after the oxygen and carbon dioxide levels have been restored to suitable levels, which distinguishes these ''closed-circuit'' respirators from ''open-circuit'' respirators, which vent each exhalation. The total capacity for oxygen supply and carbon dioxide removal vary by respirator model to address different work and escape needs. The greater the oxygen supply capacity of a respirator, the larger the

respirator size and the less practical or comfortable it might be to wear during work tasks. Current models are encased in hard, water-resistant cases to protect the respirators from damage by impact, puncture, or moisture.

B. Approval of CCERs

NIOSH and MSHA jointly review and approve such respirators for use by miners to escape hazardous atmospheres generated during emergencies in underground coal mines (42 CFR 84.3). NIOSH currently approves or certifies CCERs under 42 CFR Part 84—Approval of Respiratory Protective Devices, Subpart H—Self-Contained Breathing Apparatus, as closed-circuit apparatus for ''escape only.'' Subpart H also specifies requirements for other related, but distinct, types of respirators, including open-circuit escape respirators and respirators (closed- and open-circuit) used by rescuers responding to an emergency (''entry'' and ''entry and escape'' apparatus); none of those other types of respirators are covered by this rulemaking.

C. Need for Rulemaking

This final rule addresses problems that have been identified by NIOSH and users regarding CCERs and is intended to:

- Reduce reliance on human testing of devices, which is difficult to conduct precisely and consistently and to replicate, through the use of a machine-based testing regime that can be accurately and completely calibrated and produces replicable results;
- Establish new performance-based standards for the quality of the breathing supply produced by the CCER, based on the best available physiological research;
- Replace the measurement of the duration of breathing gas supplied with the measurement of the volume of breathing gas supplied (in liters of oxygen) as a principal certification parameter. CCERs are presently approved as providing a specified duration of breathing gas based on the performance of test subjects, but this can be misleading since the actual durations of breathing gas received by users during escapes can differ substantially from those received by test subjects;
- Require design features, as necessary, to allow users to check the material integrity of a deployed unit. This will make it easier for employers and users to detect suspect units through inspection and remove them from service;
- Establish performance-based testing requirements for durability since CCERs are often used in relatively harsh environmental and handling conditions, such as in coal mining; and
- Provide for the approval of new ''dockable'' CCER designs that would allow the user to replenish the breathing gas supply of the CCER safely, reliably, and quickly under escape conditions.

The final rule will result in the approval of CCERs that provide improved protection over those currently approved under the existing regulatory provisions and will facilitate the introduction of new technologies.

D. Scope of the Rulemaking

This rulemaking applies only to closed-circuit escape respirators. It will establish a new Subpart O codifying new testing and approval requirements for these respirators, replacing all testing and approval requirements of 42 CFR Part 84, Subpart H, that are uniquely applicable to closed-circuit escape respirators used only for escape. This rulemaking will not alter the testing and approval requirements applicable to the other types of respirators included under Subpart H.

E. Effects of Rulemaking on Federal Agencies

Federal agencies may wish to harmonize their policies and/or regulations to be consistent with NIOSH's change from the duration-based to capacity-based rating system. Federal agencies that require training as a component of their respirator use regulations may also need to assess and perhaps modify that training in concert with this rule.

II. Summary of Public Comments

On December 10, 2008, HHS published a notice of proposed rulemaking (73 FR 75027) proposing to update the requirements employed by NIOSH to test and approve closed-circuit respirators used for escaping atmospheres considered to be immediately dangerous to life and health. This class of respirators also includes such respirators required by MSHA for use in underground coal mines. HHS initially solicited public comments from December 10, 2008 to February 9, 2009. On March 4, 2009, HHS reopened the public comment period from March 4, 2009 to April 10, 2009 and announced it would hold two public meetings on the proposed rule on March 16, 2009 and March 23, 2009 (74 FR 9380). HHS again reopened the comment period from May 21, 2009 to June 19, 2009 (74 FR 23814).

HHS received comments from 14 organizations, including one labor union representing coal miners, four respirator manufacturers, one railroad, four trade associations, two federal agencies, one state agency, and one government technology consulting organization. One comment was received after the public comment period was closed and was not considered. In developing this final rule, HHS considered the comments and presentations at the public meetings. Summaries of these comments submitted to the docket and/or made at the public hearings and the corresponding responses from HHS are provided below. The description of the public comments and HHS's responses are followed by Section III, a description of the rule and the changes made in response to the comment received.

A. Need

Comment: HHS received several comments regarding the need for this rulemaking. One commenter suggested that the proposed rule does not sufficiently address the range of problems associated with closed-circuit escape respirators. The commenter's concerns related to matters outside the scope of this rulemaking, such as compliance enforcement.

Response: HHS believes that while the final rule may not resolve every issue involving CCERs, it, along with enhanced training on the proper inspection and use of deployed units, will improve the protection provided by CCERs to the workers who rely on these devices to escape from environments immediately dangerous to life or health. As indicated in the notice of proposed rulemaking preamble, HHS has relied extensively on its investigations of units taken from the field to identify problems that could be addressed through improvements to the current performance standards.

For example, a common problem among units deployed in various industries, including maritime, is that the handling of individual units tends to physically degrade or displace the chemicals necessary for oxygen production and carbon dioxide removal.

This final rule addresses the issue of degradation by establishing improved performance measures to ensure the units are reasonably rugged and the user is able to inspect the unit and readily identify units which fail the manufacturers' inspection criteria.

Comment: Another commenter stated that HHS presents no documentary evidence from device users to support the need for the rulemaking.

Response: HHS has taken this regulatory action in response to decades of reports from the field, from underground coal miners in particular, which have demonstrated that expectations training cannot always prepare a user for the reality of how a CCER will function in an actual escape. It is widely acknowledged that over the course of many coal mine disasters, users have repeatedly reported that (a) units failed to work, (b) units appeared to work but stopped far short of the expected 1-hour duration, or (c) the decision to don a unit was delayed because fresh air was more than 1 hour away.

In NIOSH's judgment, the current certification requirements might be contributing to a risk communication and risk management problem resulting in the situations indicated above. NIOSH is currently required to approve these respirators as providing protection for a specific duration [1] applicable to the particular class of respirator. Durations may be misleading to employers and users, however, because the duration for which a respirator will provide effective protection in the workplace, versus in laboratory testing, will depend on the body weight and physical condition of the user and on the amount of exertion required by the escape. The heavier the user and the greater the exertion, the more rapidly the user will consume the limited oxygen supply and exhale carbon dioxide into the unit; the faster this is done, the greater the likelihood that the exhaled carbon dioxide will accumulate excessively within the user's breathing zone, making breathing intolerable.

Since 1982, NIOSH has received reports of incidents in which users purportedly have not received the duration of protection implied by the approval. While such incidents could have resulted from the respirator failing to perform as approved, they might also reflect limitations of understanding about the testing criteria regarding duration. Accordingly, this rulemaking eliminates the duration-specific approval, replacing it with a capacity rating system based on the quantity of usable oxygen supplied by the model. (See below for a more thorough discussion of the change to a volume-based standard).

In addition to what NIOSH considers a risk communication/management problem, NIOSH field evaluations of approved CCERs conducted systematically and in response to the concerns of users have identified damaged respirators that failed to meet the performance criteria under which they were approved.[2] In some instances, the designs of these respirators did not allow the user or employer to evaluate the condition of a particular respirator prior to its use in either an evacuation drill or an actual emergency. In response to the problems identified, respirator manufacturers have made design improvements to allow persons to check for certain types of damage. However, such checks or indicators are not governed by current regulations and do not exist in some of the respirators currently available. The final rule addresses these indicators which will simplify the inspection of units by employers and users and result in the removal from service of those which show evidence of exposure to conditions that may cause performance problems.

This rulemaking also upgrades testing standards by more stringently verifying the quantity and quality of breathing gas supplied by approved CCERs. In certain circumstances, particularly during a prolonged or highly energetic escape, this type of respirator may provide the user with a constrained supply of oxygen and permit levels of carbon dioxide that can feel uncomfortable. The upgraded testing standards provide improved assurance that the levels of oxygen and carbon dioxide will be maintained consistently within tolerable limits throughout their use during an escape. Together with effective training to ensure that users are familiar with the particular breathing experience to be expected of this type of respirator, these improvements should help to ensure that workers can make full use of the respirators during an escape.

HHS is also improving on the existing standard by avoiding human test subject variability in defining capacity and limiting its use in testing performance characteristics. Use of the breathing and metabolic simulator will ensure that neither the capacity nor the performance test criteria are wholly dependent on human subjects, which will establish a consistent and hence more reliable testing regimen.

Comment: Finally, a commenter from the maritime sector expressed concern that the rulemaking and expenses associated with the replacement of currently-deployed units were unwarranted because HHS has not demonstrated that CCERs used on ships are problematic.

Response: HHS does not expect the promulgation of this final rule to be a hardship on the maritime sector. The 6-year grandfather clause in the proposed rule has been omitted from this final rule, allowing units currently deployed on ships to remain in service until the end of their service life. To ensure no disruption in the supply of CCERS, currently-approved devices may not be manufactured and labeled as NIOSH-approved and sold after April 9, 2015.

B. Size

Comment: Seven commenters expressed concern that the improved standards might result in the production of larger, heavier CCERs.

Response: HHS does not expect that a manufacturer would increase the size or weight of a CCER design in response to the new standards. It is possible that manufacturers could enlarge certain individual respirator designs or increase their weight in order to meet the new capacity rating standards and the more effective eye protection requirements. However, because most current CCER designs include eye protection, HHS does not expect an increase in either size or weight solely for this reason. Further, NIOSH bench testing on currently-approved units demonstrates that they can provide the same amount of oxygen as required by the capacity standards in this final rule. For example, current 1-hour units provide 80 liters (L) of oxygen, comparable to a Cap 3 device; 10-minute units provide approximately 25 liters of oxygen, comparable to a Cap 1. The new standards afford greater latitude regarding potential variety in the capacity of individual respirator designs, given that each capacity rating encompasses a range of oxygen volumes (e.g. Cap 1 units can contain from 20 L to 59 L of oxygen). This latitude should promote designs that more closely meet the varied capacity, size, weight, and other requirements of different users, occupational settings, and emergency provisions and contingencies.

C. Scope

Comment: HHS received three comments indicating that the scope of the rulemaking should be expanded to also include technical standards for open-circuit escape respirators. Another commenter concurred with the Agency's approach, stating that limiting this rulemaking to CCERs is warranted because of the clear distinctions between the two types of technology.

HHS also received a comment demanding that the scope of the

[1] 42 CFR 84.53.

[2] See, e.g., Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: seventh-phase results.* Pittsburgh, PA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; March 2002. DHHS (NIOSH) Publication No. 2002–127, RI 9656.

proposed rule address all aspects of development, purchase, deployment, tracking, and use of CCERs in coal mines.

Response: NIOSH is updating all of its standards under 42 CFR Part 84 using an incremental or modular approach. The updating of CCER standards was a high priority to the Agency and to users and employers because of the extensive concerns raised regarding this technology. Open-circuit escape respirators employ distinct technology that is likely to require different changes to the current standards. HHS intends to address open-circuit escape respirators in a future rulemaking.

Under 42 CFR Part 84, HHS establishes applicable construction, performance and respiratory protection requirements for respirators. Section 84.3 describes MSHA's authority to co-approve respirators determined to be suitable for use in mines. HHS does not have authority to regulate the deployment and use of CCERs in coal mining or other industries.

D. Feasibility

Comment: HHS received one comment stating that HHS has not provided data indicating that it would be feasible for CCER manufacturers to produce designs capable of meeting the new certification standards before the 3-year cut-off date for sales of currently approved models.

Response: CCER manufacturers have provided extensive comments during the development of this rule and have not indicated this concern. As discussed below, this final rule omits the proposed 6-year grandfather clause limiting the duration over which currently approved CCERs may continue to be used within their prescribed service lives; as discussed below under § 84.301, the final rule does not discontinue the approvals of CCERs currently deployed or sold within 3 years of the effective date of this rule. Moreover, while the rule provides incentive for innovation, it does not specify new performance parameters that cannot be met by existing technology.

E. State Stakeholders

Comment: One commenter indicated that the Department's efforts to reach out to state mine safety agencies on the development of this rule were inadequate.

Response: HHS reached out to all stakeholders by providing numerous opportunities to comment throughout this rulemaking process. HHS announced all public meetings and opportunities to provide written comment in the **Federal Register** during both the concept and rulemaking stages. During the concept development work carried out by the Agency preceding this rulemaking, public meetings were held to solicit input from all stakeholders. These meetings included participation from representatives of labor and industry, other federal and state agencies, as well as manufacturers and academia. Subsequently, during this rulemaking, the docket and public comment meetings were open to all interested parties and included participation by a consultant to the mine safety agency of West Virginia.

F. Railroads

Comment: Two commenters advised HHS to consider the use of CCER by railroads.

Response: HHS acknowledges the use of escape respirators by the railroad industry, and specifically recognizes the respirator requirements codified by the Rail Safety Improvement Act (RSIA) of 2008 (49 U.S.C. 20166; Pub. L. 110–432, sec. 413). While no final rule concerning escape respirators have yet been promulgated under the RSIA, HHS has considered the RSIA requirements in drafting this final rule. This final rule does not conflict with the RSIA respirator requirements, which address the supply of CCERs on railways but do not include design or performance specifications. The omission from the final rule of the proposed 6-year grandfather provision regarding the continued use of already deployed CCER units should eliminate any feasibility concern of the railroads.

G. Training

Comment: HHS received two comments questioning whether the new rule will affect the training given to coal miners.

Response: Such training is governed by MSHA, Department of Labor, pursuant to its authority under the Federal Mine Safety and Health Act (30 U.S.C. 952, 811), and codified under 30 CFR 75.1504. The Agency has worked with MSHA throughout the course of this rulemaking to ensure that MSHA policies will be consistent with the amendments to Part 84.

H. Section 84.300 Closed-Circuit Escape Respirator; Description

Comment: HHS received three comments objecting to the use of the term ''closed-circuit escape respirator'' to identify the subject of this rulemaking. These commenters would prefer to classify these devices as ''self-contained self-rescuer,'' the term commonly used by the mining industry. One of these commenters suggested that the use of a terminology not recognized by the mining industry resulted in that community not understanding the rule's potential impact.

Response: While the mining industry categorizes these devices under one term, they are referred to as ''emergency escape breathing apparatus'' on railroads, and as ''emergency escape breathing devices'' onboard ships. CCER is the classification of this type of respirator under any of these designations. HHS will retain the classification ''closed-circuit escape respirator'' because it is the technically correct name of the devices to be considered for approval and because HHS does not intend to impose one industry's designation on other industries that have their own. The use of the term ''closed-circuit escape respirator'' in this rulemaking does not in any way proscribe the use of the term ''self-contained self-rescuer'' by manufacturers or the mining industry, or other terms used by other industries. This is consistent with the current standard (42 CFR Part 84, Subpart H), which does not refer to the devices as ''self-contained self-rescuers,'' but rather ''closed-circuit self-contained breathing apparatus.''

I. Section 84.301 Applicability to New and Previously Approved CCERs

Comment: HHS received various comments on the proposed 3-year certification phase-in period for new devices and the proposed 6-year grandfather clause for units purchased prior to the effective date of the final rule. One commenter supported both the 3-year phase-in and the grandfather clause, and opposed the option discussed in the notice of proposed rulemaking of omitting the grandfather clause, which could result in currently approved CCER units remaining in the field for 13–18 years (their potential service life) following promulgation of this final rule. One commenter requested that HHS include no phase-in period, and that instead manufacturers should be prepared to supply new units, approved under the final rule, immediately upon promulgation. The same commenter suggested that HHS would otherwise exceed its authority under the Mine Improvement and New Emergency Response (MINER) Act of 2006 (29 U.S.C. 671(h), Pub. L. 109–236, sec. 6) by delaying the deployment of new technologies. Two other commenters concurred with HHS regarding the exemption of the Department of Defense (DOD) from the 6-year grandfather provision of the proposed rule, as proposed therein. Finally, four commenters opposed the 6-

year grandfather clause for units approved under the current standards. They argued that the discarding of CCERs with remaining service life would be financially costly and potentially infeasible, considering the difficulties experienced by manufacturers in producing sufficient CCER supplies for the mining industry under the expanded deployment requirements promulgated by MSHA under the MINER Act (30 U.S.C. 876 (E)(iii)).[3]

Response: HHS recognizes that recent amendments to the statutory schemes governing two of the three main users of CCERs—mining and railroads—require the deployment of substantially increased numbers of units of escape respirators. For example, the Rail Safety Improvement Act of 2008 requires that the Federal Railroad Administration in the Department of Transportation enact regulations mandating respirators on certain locomotives for all crewmembers (49 U.S.C. 20166; Pub. L. 110–432, sec. 413). Similarly, the MINER Act requires mine operators to make additional caches of respirators available to workers, a provision which has been implemented by MSHA and mine operators. HHS also recognizes that the relevant, industry-specific regulatory agencies and DOD are authorized to govern respirator use within their specific industry domains and that their authorizations differ.

Within 3 years of the effective date of this final rule, NIOSH will continue to recognize respirators manufactured and labeled as NIOSH-approved devices and sold by manufacturers under the current approvals as long as they continue to be maintained and used in accordance with the conditions of approval. It is not appropriate for HHS, which is not authorized to govern respirator use in particular industries, to consider requirements or limitations on the continued use of approved CCERs that are deployed currently or may be deployed within the 3-year manufacturing/labeling and selling limitation of this final rule. Such consideration would involve matters outside of HHS's purview, including the varying service life ranges of different CCER designs currently approved by NIOSH; the different storage, maintenance, and use conditions; differing feasibility concerns regarding maintenance of an adequate supply of CCERs; and the agencies' different statutory and regulatory requirements.

Eliminating the 6-year grandfather period in the final rule removes potential economic costs[4] to employers that could result from replacing or retrofitting any respirator designs that remain in use at their worksite but are not submitted to NIOSH for retesting under the new approval tests. This change also fully addresses the feasibility concerns raised in the public comments. On the other hand, it allows that some currently-approved CCERs may remain in service for their entire service life, unless the relevant regulatory or purchasing agencies determine otherwise. Designations of service life for currently-approved CCERs range from 10 to 15 years.[5] As noted in the notice of proposed rulemaking, these designations do not account for the highly varied conditions of storage and handling of CCERs across different work environments. Through extensive field studies evaluating the condition of CCERs deployed in coal mines, NIOSH and MSHA have found that the actual deployment duration of current CCERs in coal mines tends to be substantially less than designated, due to wear and tear and damaging environmental conditions.[6] In other industries involving less physically degrading conditions, CCERs may be more likely to remain available for deployment for their full service life.

With respect to the 3-year phase in period, HHS recognizes the difficulty experienced by some manufacturers in meeting the current demand for respirators and the potential need for design development and related production line changes. The Department finds that it would not be feasible to require manufacturers to redesign products and change their production processes immediately upon promulgation of the final rule. Therefore, HHS has retained in the final rule the proposed allowance for CCER manufacturers to continue the sale of manufactured and NIOSH-labeled currently-approved CCERs for 3 years, upon this rule's effective date. The final rule has been changed slightly from the language that was originally proposed, to indicate that respirators must be manufactured and labeled NIOSH-approved within the 3-year deadline, as well as sold by manufacturers within that deadline, to ensure that respirators approved under the new standard are integrated into the field as quickly as possible.

As of the effective date of this rule, NIOSH will only accept applications for approval of CCERs under these new standards. NIOSH believes there are manufacturers who will be ready to submit applications to meet the new standards at that time and will do so to enhance the marketability of their products. In addition, the new rule permits the introduction of new technology, such as the dockable unit.

J. Section 84.302 Required Components, Attributes, and Instructions

Comment: HHS received various comments regarding components required to indicate specific types of damage that might reduce the effectiveness of the CCER unit. Two commenters supported the provision in its entirety; one supported the objective but proposed that the indicators be designed to minimize false positives (when the indicator falsely indicates there is a problem) and false negatives (when the indicator falsely indicates there is not a problem). One commenter requested that all indicators be failsafe (100 percent accurate in indicating problems) and that indicators should become permanently altered to indicate material or functional degradation. Another commenter suggested that the rule should require an additional indicator, specific to CCERs that use compressed oxygen or chlorate candles, which would allow the user to verify that the oxygen starter will activate. Another commenter requested that oxygen starters employed in CCERs be required to include a pressure gauge.

Response: HHS has retained requirements for indicators in certain circumstances. These requirements are intended to codify what has become standard equipment on currently-approved respirators. Some types of damage are obvious, but the purpose of the indicators is to reveal critical damage or unacceptable environmental exposures that would not be otherwise evident to users. Such indicators are required only to address susceptibilities of the particular CCER design and are required only for those components or attributes critical to the life-preserving functions of the respirator. While it may not be possible to build a device that

[3] U.S. Government Accountability Office. *Additional guidance and oversight of mines' emergency response plans would improve the safety of underground coal miners.* April 2008; GAO–08–424 at 24. *http://www.gao.gov/new.items/d08424.pdf.* Accessed October 7, 2010.

[4] See Section IV.A of this preamble for a discussion of potential economic costs.

[5] One product has a service life of 15 years, but to achieve this service life, it must be reconditioned by the manufacturer at 10 years if stored and at 5 years if carried.

[6] NIOSH evaluations of the physical condition and performance of deployed CCERs are conducted routinely as a quality assurance measure and in response to complaints, concerns, and emergency incidents. The findings of these evaluations are documented in published Long-Term Field Evaluations and NIOSH internal reports; actionable findings provide the basis for remedies addressed by NIOSH and the applicant.

cannot be broken, it is possible to build a device that clearly indicates when it should no longer be relied upon to protect the wearer. HHS will require manufacturers to include indicators that unambiguously alert users to the detection of damage or degradation. These indicators will permit employers and users to inspect units, and remove from service those units that demonstrate exposure to conditions that may cause performance problems.

NIOSH will examine the accuracy and reliability of indicators on a case-by-case basis, as this is an important element of ensuring that they are effective. A substantial potential for false negatives would be of particular concern since it might mislead employers and users regarding CCER units that should be removed from service. A high potential for false positives would also be problematic because the employer might remove undamaged units from service based on the false indications, which has cost implications but also could impact the credibility of the indicators, potentially discouraging compliance. However, in NIOSH's experience—which includes Long-Term Field Evaluations, manufacturer audits, and investigated field complaints—true false positives are rare, as indicators are designed to minimize their occurrence. CCER units are known to experience performance degradation after exposure to extreme (as defined by the manufacturer) heat and moisture; temperature and heat indicators on currently-approved units reliably alert users to exposures that have the potential to cause a unit to be unable to supply oxygen or scrub carbon dioxide at sufficient levels to effect an escape. The standard, as written, does not require that an indicator alert the user that the unit has sustained damage, but that the unit has been subjected to environmental conditions that could cause damage to the unit. NIOSH will validate indicators during the certification process and through post-approval testing under its Long Term Field Evaluation program discussed in the notice of proposed rulemaking (73 FR 75027 at 75037, December 10, 2008) and its Certified Product Investigation Program. HHS agrees that manufacturers should attempt to design indicators to minimize false positives and negatives, but will not require that standard in the final rule. To enable NIOSH to effectively evaluate the indicators, the final rule text requires manufacturers to provide NIOSH with information about each indicator, including an explanation of how the indicator works, any relevant data that will enable the evaluation, and any tools used by the manufacturer to evaluate indicator function.

In this final rule, HHS has added a provision requiring an oxygen starter indicator or other component to detect certain damage or deficiencies to the starter if it is a critical component to the effective use of the CCER. For compressed air starters, this may mean a pressure gauge; for a chemical starter, it could mean a color change chemical indicator observable through a port/window; for any unit, it could mean instructions to observe conditions that may prevent intended activation and release of the starter oxygen (i.e., denting or damage or a pulled or broken starter pin) or an indicator of the starter assembly's exposure to moisture, excessive temperature, g-force, or other physical damage.

1. Chemical Bed Physical Integrity Indicator

Comment: Two commenters addressed the issue of chemical bed physical integrity indicators for carbon dioxide scrubbers: One believed such an indicator is unwarranted since quality control during manufacturing will ensure that the scrubber will work when required, and post-approval testing will verify continuing effectiveness after deployment; the other commenter requested specific requirements for these indicators.

Response: The chemical bed physical integrity indicator will not be required if the chemical oxygen supply or chemical carbon dioxide scrubber cannot be altered by impact, vibration, or any other environmental factor. This indicator would only be required when the design of the CCER would allow for the degradation of chemical oxygen supply or the carbon dioxide scrubber. The text of this provision has been revised to indicate that units in which the chemical oxygen storage or chemical carbon dioxide scrubber can be altered by impact or any other effect must include the chemical bed integrity indicator.

HHS has not added any specific requirements for the design of such an indicator. An indicator, when required, must accurately and reliably indicate when the capacity or performance attributes of the CCER have been degraded such that the unit does not meet the capacity and performance testing requirements of this final rule. NIOSH will examine and/or test the accuracy and reliability of the indicator appropriate to the indicator's design attributes and their potential susceptibilities to failure. The manufacturer is not limited with respect to the possible indicator designs permissible to achieve this performance standard.

2. Instructions and Service Life Plan

Comment: The proposed rule would have required manufacturers to include instructions and a service life plan with each new CCER unit. One commenter found the requirement unwarranted while another asserted in support of the proposal that the service life plan is an essential requirement.

Response: Manufacturers include instructions with currently approved units in a variety of manners and this information is often lost or damaged because of the way in which units are handled in the field. Users are required to be trained in the donning and use of CCERs such that users should be thoroughly familiar with the devices in the event of an emergency. Accordingly, HHS agrees with the commenter noted above that manufacturers should not be required to provide instructions or a service life plan with each individual unit. The final rule has been modified accordingly.

3. Labeling

Comment: HHS received one comment recommending that the capacity rating be identified on the device.

Response: The Department does intend to require manufacturers to indicate the capacity rating (e.g. Cap 3) as well as the number of liters of oxygen as determined by the capacity test on the label of each CCER unit. This intent was implicit in the proposed rule's provisions for capacity ratings and NIOSH reporting of achieved capacity values under § 84.304. This comment is adopted in the final rule and the language in the rule text has been clarified.

K. Section 84.303 General Testing Conditions and Requirements

1. Breathing & Metabolic Simulator

Comment: HHS received several comments on the conduct of capacity and performance testing using the breathing and metabolic simulator for quantitative evaluation, and the use of human subjects for qualitative evaluation of units.

One commenter supported the retention of some human subject testing to assess the human factors associated with CCERs; several commenters supported the use of simulators to conduct quantitative analysis on CCER units, however one of those commenters would have preferred that the use of human subjects represent the broader mining community and not be limited

to a single subject. Finally, one commenter requested that capacity and/or performance testing include a simulation of multiple realistic demand models, which should not terminate until the breach of specific performance thresholds.

Response: HHS continues to find it appropriate to shift from human-based testing to the breathing and metabolic simulator model to assess the quantitative aspects of CCER capacity and performance and has retained the breathing and metabolic simulator testing in the final rule. Breathing and metabolic simulator testing will provide a uniform, consistent basis for evaluating the functional characteristics of CCERs and allows NIOSH to evaluate CCER performance to the point at which the CCER gas supply is completely depleted, ensuring that the CCER's capacity and performance is fully evaluated. HHS has also retained limited human subject testing in the final rule, as specified in the proposed rule, to make ergonomic assessments and to ensure consistency with statutory requirements applicable to mining.[7]

In the Agency's judgment, it is not feasible for NIOSH to conduct scenario testing. The capacity testing protocol cannot fully predict a range of escape scenarios to address all situations in which CCERs might be deployed. Man test 4, required for capacity testing units intended for use in coal mines, is not designed to represent a mine escape; it is included as an ergonomic assessment of the physical orientations that may be required during a mine escape. This ergonomic assessment is sufficiently realistic; in NIOSH's judgment, a more realistic demand model is unwarranted.

Comment: Two commenters said the proposed rule lacks test protocols to determine which respirators will pass or fail.

Response: HHS has clearly specified in the proposed rule and in this final rule the performance standards by which respirators will be evaluated using the breathing and metabolic simulator and through human testing, addressing respirator capacity and performance. Upon request, NIOSH will make available to manufacturers its specific protocols and breathing and metabolic simulator performance specifications so that manufacturers can duplicate NIOSH testing methods. Standard test procedures will be posted on the NIOSH Web site at *http://www.cdc.gov/niosh/npptl.*

Comment: One commenter has requested that HHS provide verification of the performance and accuracy of each breathing and metabolic simulator used by NIOSH for capacity and performance testing.

Response: NIOSH is willing to share fully its experience over many years with its breathing and metabolic simulator, as well as its design specifications, as noted above. The technology used in the breathing and metabolic simulator used by NIOSH is readily calibrated and when calibrated, is not subject to significant variability in relation to the simulation and measurement performance required for testing specified under this final rule.

To ensure the accuracy of the breathing and metabolic simulator, the analyzers are calibrated before each test along with transport and response time of the gas measurement system. All of these will be documented in the standard test procedures developed for the certification tests.

Comment: HHS received one comment suggesting that the manufacturer's respirator donning and use instructions be applied during capacity and performance testing. The commenter offered text changes to provide that capacity and performance tests would be conducted in accordance with the manufacturer's instructions. While earmarked for § 84.303(a), it appears this comment is meant to refer specifically to the hypoxia testing component of § 84.305.

Response: HHS believes the hypoxia test procedure is well-conceived and essential for determining whether a unit will expose a user to low inhaled oxygen concentrations. Many CCER users are trained to exhale into a CCER upon donning it because this is the recommended practice for CCERs supplied with chemical oxygen if the oxygen starter fails. In an emergency, it is likely that some users will exhale into the CCER regardless of its design, in which case NIOSH needs to ensure that the respirator will perform adequately. The final rule's requirements assume that a reasonably likely donning procedure will be applied by the user irrespective of the specific type of CCER available to the user. Therefore, performance tests will begin with two exhalations into the unit and then the manufacturer's instructions will be followed in order to determine the design's susceptibility to hypoxia.

HHS also received many comments concerning the values included in Table 1—Monitored Stressors and Their Acceptable Ranges, including all four criteria (average inhaled carbon dioxide, average inhaled oxygen, peak breathing pressures, and wet-bulb temperature). Capacity, performance, and wearability tests will continuously monitor the stressors listed in this table. Those comments and HHS's responses follow below.

2. Carbon Dioxide

Comment: Three commenters addressed acceptable operating average and acceptable range excursion values for carbon dioxide in Table 1. One commenter objected to the 1.5 percent average carbon dioxide concentration, and requested that HHS justify the change in this value for closed-circuit devices when the value for open-circuit devices (currently 2.5 percent) remains unchanged. The other two commenters objected to the proposed 4 percent carbon dioxide ''parameter,'' given the potential for slightly impaired decision-making in some subjects when exposed to this amount of carbon dioxide.

Response: HHS has retained the average and acceptable range excursion values in the final rule. The 1.5 percent average limit for carbon dioxide is feasible using current technology (based on NIOSH testing of existing designs) and it is an important improvement for assuring the protection of users. As carbon dioxide levels rise users are increasingly likely to interpret the breathing experience as faulty and possibly indicative of a malfunctioning CCER. This could lead the user to abandon the CCER when its use is critical for survival.

An excursion limit of 4 percent is physiologically tolerable for brief periods[8] and its application to all CCER

[7] The Federal Mine Safety and Health Act which governs the mandatory health and safety standards issued by the Secretary of Labor requires that ''no mandatory health or safety standard * * * shall reduce the protection afforded miners by an existing mandatory health or safety standard.'' 30 U.S.C. 811(a)(9). The continued use of man test 4, as a supplement to the new testing requirements and capacity rating system, will be the most practical method of ensuring that the use of these respirators, as approved under this final rule, is consistent with the standard set by the Act.

[8] Glatte HA, Motsay GJ, Welch BE. Carbon dioxide tolerance studies. Brooks AFB, TX. U.S. Air Force, Aerospace Medicine Division, USAF School of Aerospace Medicine. Report #SAM–TR–67–77; 1967:1–22.

Henning RA, Sauter SL, Reddan W, Lanphier EH. Behavioral impairment with altered ventilatory response to CO_2. Federation of American Societies for Experimental Biology, Abstracts of 67th Annual Meeting, Chicago, IL, 10–15 April 1983. *Federation Proceedings:* 1983;42(4):1013.

Kamon E, Deno S, Vercruyyen M. Physiological responses of miners to emergency. *Vol. 1—Self-contained breathing apparatus stressors.* University Park, PA: The Pennsylvania State University. U.S. Bureau of Mines contract No. J0100092; 1984:13.

Sheehy JB, Kamon E, Kiser D. Effects of carbon dioxide inhalation on psychomotor and mental performance during exercise and recovery. *Human Factors.* 1982;24(5), 581–588.

Storm WF, and Giannetta CL. Effects of hypercapnia and bed rest on psychomotor performance. *Aviation, Space, and Environmental Medicine.* 1974;45:431–33.

designs would improve the quality of breathing gas in these respirators, as discussed above with respect to the average limit. With respect to the concern that the 4-percent level might be too high, HHS notes that 4 percent is allowed only as an excursion level. Excursions are recorded during testing in 1-minute increments, with the average level determined over the entire expended breathing gas supply of the unit. CCER designs that allow carbon dioxide levels to approach the excursion limit repeatedly or for significant time would not achieve the specified limit on the average carbon dioxide level. Accordingly, NIOSH will not approve units that would allow a carbon dioxide excursion for a duration that would impair the user during an escape.

Finally, capacity and performance standards for open-circuit designs will be addressed in a future rulemaking.

3. Oxygen

Comment: Two commenters discussed the proposed acceptable range excursion value for oxygen: One commenter found the excursion range unwarranted, and expressed concern that manufacturers would attempt only to meet this ''minimum threshold.'' The other commenter opposed the excursion limit and recommended further study.

Response: HHS disagrees with the commenters and has retained the proposed acceptable excursion value for oxygen in Table 1. The 15 percent range excursion limit for oxygen is not an operating parameter. As discussed above with respect to the carbon dioxide excursion limit, it allows only for brief variation to a low oxygen level, within physiologically established tolerance.[9] To raise this excursion limit would require CCERs that would be ''overbuilt,'' resulting in unnecessarily large and/or heavy designs. The average limit of 19.5 percent, which is the level of oxygen available at approximately 2,000 feet above sea level, will ensure that users receive a fully adequate oxygen supply to execute their escapes. The brief excursions that would be allowed by this average level limit do not pose any impairment risk to the user.

During testing, readings are taken in 1-minute intervals, with the average level determined over the entire expended breathing gas supply of the unit; oxygen concentrations from 20 to 100 percent are recorded as 20 percent. Concentrations between 19.5 percent and the lowest allowable level, 15 percent, are recorded as the actual value. The average of these values must remain at or above 20 percent over the entire test. In a worst case scenario, this method of averaging allows for approximately 10 percent of the sample intervals to be at the excursion limit of 15 percent. For example, during a test composed of 60, 1-minute sample intervals, five samples could indicate an oxygen level of 15 percent. If an additional 1-minute interval were to exhibit an oxygen level of less than 19.5 percent, the unit would not pass the test.

Comment: One commenter requested that HHS consider CCER designs equipped with hoods, which effectively store unused oxygen for use after the oxygen source has been expended. This commenter believes that § 84.303(c) restricts manufacturers' design options.

Response: Section 84.303(c) would not restrict CCER designs. Section 84.303(c) specifies that tests will conclude when the oxygen supply has been fully expended. This would include oxygen that remains stored in a hood if a hood is part of the CCER design.

4. Peak Breathing Pressures

Comment: HHS received two comments pertaining to peak breathing pressures. One commenter suggested that that the proposed values should be more conservative. Specifically, the commenter has proposed the value ±100 millimeters of water (mm H_2O) for the acceptable range operating average, and ±200 mm H_2O for the acceptable range excursion, on the grounds that the operating and excursion ranges offered in the proposed rule are unacceptable and may result in the user discarding the unit prematurely. Similarly, another commenter objected to the assertion that ''Users who cannot generate these [peak breathing] pressures may be forced at some point to slow the pace of their escape.''[10]

Response: The values proposed by HHS are based on human physiological capability[11] and are retained in the final rule. The lower pressure range suggested by the commenter would result in a bulkier, heavier device than is practical. The assertion that some users may be forced to slow their escape is based on the mechanical and chemical limitations of this type of respirator; certain users, especially very large individuals, would be able to exceed the supply capability required for an unlimited level of exertion. This inherent limitation of the technology is appropriately addressed through the training provided to users.

5. Wet-Bulb Temperature

Comment: HHS received four comments regarding wet-bulb temperature, included in the table of monitored stressors to represent the temperature of the inhaled breathing gas in the CCER user's trachea. One commenter warned against adopting the highest threshold number for evaluating wet-bulb temperatures. Another suggested that the proposed standard should rely on dry-bulb instead of wet-bulb temperature because dry-bulb temperature is technically easier to measure in the laboratory. This commenter further suggested that the comparison of wet-bulb temperature to a user's trachea is not accurate, as the trachea is not always a wet surface. Another commenter expressed concern that standardizing humidity responses between different simulators will be difficult, as the temperature reading is not a fundamental property and is specific to each breathing and metabolic simulator. For example, the commenter asserted that wet-bulb response will ''vary with different flow rates, different amounts of water on the thermocouple, or different size thermocouples,'' and suggested that HHS consider using a fast-response sensor. Finally, one commenter asserted that the inhaled gas temperature (<43 °C acceptable range operating average) is arbitrary, and suggested adopting International Organization for Standardization (ISO) 23269–1:2008, *Ships and marine*

Vercruyssen M, Kamon E. Behavioral effects of breathing 3% and 4% carbon dioxide during and following physical work. Toronto, Ontario, Canada, 7–9 May, 1984. *Proceedings of the 1984 International Conference on Occupational Ergonomics.*

[9] Ainslie PN, Barach A, Cummings KJ, Murrell C, Hamlin M and Hellemans J. Cardiorespiratory and cerebrovascular responses to acute poikilocapnic hypoxia following intermittent and continuous exposure to hypoxia in humans. *Journal of Applied Physiology.* 2007;102:1953–1961.

Fowler B, Paul M, Porlier G, Elcombe DD, Taylor M. A re-evaluation of the minimum altitude at which hypoxic performance decrements can be detected. *Ergonomics.* 1985;28(5): 781–791.

Malkin VB. Barometric pressure and gas composition. In *Foundations of Space Biology and Medicine.* Vol II, Book 1 (Ecological and physiological bases of space biology and medicine). 1975;25–31.

Paul MA, Fraser WD. Performance during mild acute hypoxia. *Aviation, Space, and Environmental Medicine.* 1994;65(10):891–899.

West JB, *et al.* Maximal exercise at extreme altitudes on Mt. Everest. *Journal of Applied Physiology.* 1983;55:688–698.

Zoll J, *et al.* Exercise training in normobaric hypoxia in endurance runners. *Journal of Applied Physiology.* 2006;100:1238–1248.

[10] 73 FR 75,027 at 75,032 (December 10, 2008).

[11] Hodgson JL. *Physiological costs and consequences of mine escape and rescue.* University Park, PA: The Pennsylvania State University. U.S. Bureau of Mines contract No. J0345327; 1993:19.

technology—Breathing apparatus for ships—Part 1: Emergency escape breathing devices (EEBD) for shipboard use, which sets the maximum inhaled gas temperature at 50 °C.

Response: HHS has retained in the final rule the use of wet-bulb temperature and the average and excursion ranges specified (<43 and ≤50 °C, respectively) because the trachea is always wet and because monitoring wet-bulb temperature provides a more accurate measure of the heat content of the inhaled gas and human thermal sensitivity is related to the wet-bulb temperature.[12] As with other testing protocols, manufacturers may copy the technology and technique to be applied by NIOSH for certification testing.

The ISO 23269–1:2008 performance requirements establish that ''the temperature of inhalation gas shall not exceed 50 °C'' for respirators deployed for shipboard use. In accordance with the ISO standard, this final rule also establishes that the acceptable range excursion for CCERs is 50 °C, while the average operating temperature must be less than 43 °C.

From running many treadmill tests on both compressed- and chemical-oxygen breathing apparatus, NIOSH knows that the exhalation temperature of human subjects rises as inhalation temperature rises. The exhalation temperature of human subjects breathing room air varies from 30 to 33 °C. As inhalation temperature rises, NIOSH has observed the exhalation temperature rise to as high as 45 °C. The ventilatory components of our breathing and metabolic simulator were designed to simulate human subjects based on shape, size, and orientation. There is a water reservoir which heats the water and pumps it into a plenum above the lung where it spreads out and rains down onto the piston. The water in the lung is a moderate quantity, unlike most other simulators which have a larger quantity. This enables our simulator to be overwhelmed by higher inhalation temperatures, emulating human beings. The air pathway between the lung/piston and the mouth port is divided into three pipes covered both with heat tape and metal fins. This simulates the volume and surface area of the trachea, enabling heat transfer to and from the air stream, respectively, again emulating human response to the temperature of inhalation gases. NIOSH can set and specify the exhalation temperature of the airway gas while breathing room air, but cannot specify the breathing and metabolic simulator exhalation temperature for every combination of inhalation wet- and dry-bulb temperature. Because it is designed to physically simulate the human lung and airway, the simulator responds in a human-like manner to rising inhalation temperatures.

The wet-bulb thermocouple, designed and built in-house at NIOSH, is the only such instrument known which has a response time of <1 second. Since the human respiratory tract is essentially a wet-bulb thermometer, human beings are sensitive to wet-bulb temperature, not dry-bulb temperature. For this reason, the inhalation temperature limits are specified in terms of wet-bulb temperature. Large wet-bulb thermometers have long response times due to their large size and, thus, large thermal inertias. They need high flows and long times to achieve the full wet-bulb depression. The NIOSH wet-bulb thermocouple, due to its small size, requires neither high flow rates nor long response times to achieve the full wet-bulb depression. Also, the miniscule quantity of water on the wet-bulb thermocouple will have a commensurately miniscule effect on the apparatus bed reaction.

L. Section 84.304 Capacity Test Requirements

Section 84.304(a)(5) is changed from the proposed rule to require that CCER designs of any capacity submitted to NIOSH for deployment in U.S. coal mines pass man test 4 which is set forth in the present regulation at § 84.99 and § 84.100. The test provides assurance that the CCER certification testing for devices used in mine escape remains at least as rigorous as testing under the current standards. Section 84.304(d) establishes a new rating system for CCERs, shifting the classification scheme from duration to oxygen capacity.

1. Man Test 4

Comment: HHS received several comments regarding the proposed use of man test 4: One commenter objected to the use of the 50th percentile weight test subject, and suggested that the rule should be expanded to include a wider range of workers. Another commenter requested clarification regarding use of the 50th percentile worker and whether that standard is consistent with established certification test practices (which, according to the commenter, represents the 95th and at times the 99th percentile miner). Another questioned whether it is possible that the device could pass the duration test on the breathing and metabolic simulator but fail man test 4, and recommended that the breathing and metabolic simulator be used to determine duration and the man test for wearability. Finally, one commenter suggested that the inclusion of man test 4 does not address the legal duty under the Federal Mine Safety and Health Act requiring that ''no mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.''[13]

Response: HHS has retained the provision in the final rule that requires those units used in coal mines pass man test 4. HHS, however, has amended the provision slightly to indicate that any size unit submitted to NIOSH for approval for use in coal mining will be subject to man test 4. Man test 4 is an exceptionally challenging test with the average miner in mind, and translates to demanding performance requirements. Neither the present regulation nor this final regulation specifies the weight range of the test subject for man test 4.

With regard to the established approval testing, this improved standard is changing the metrics used to approve CCERs. The work rate for the 50th percentile miner is already used to assess deployed units during the long-term field evaluations conducted by NIOSH. Using that standard here is consistent with current NIOSH practices.

Finally, as of the effective date of this rule, NIOSH will no longer approve CCERs according to the duration of breathing gas supply. The breathing and metabolic simulator will be used to evaluate the oxygen capacity of a given CCER design; man test 4 is included here to establish that approval of devices intended for use in a specific application—underground coal mines—is at least as effective as the current standard, and that the devices will perform as required by the Federal Mine Safety and Health Act. However, with regard to the comment that a unit might fail the simulator testing but pass man test 4, a unit that fails on the simulator at the capacity rating indicated by the manufacturer will not proceed to man test 4.

With respect to Federal Mine Safety and Health Act sec. 811(a)(9), HHS is promulgating these CCER approval standards because they are an improvement over the current standards. The main developments are that the new standards shift to a more instructional and informative rating

[12] Kamon E, Deno S, Vercruyyen M. Physiological responses of miners to emergency. *Vol. 1—Self-contained breathing apparatus stressors.* University Park, PA: The Pennsylvania State University. U.S. Bureau of Mines contract No. J0100092; 1984:117, 119.

[13] 30 U.S.C. 811(a)(9).

system that addresses the documented shortcomings with the traditional, duration-based system; the new standards avoid human test subject variability in defining capacity by relying on the breathing and metabolic simulator; the quality of breathing gas is more closely monitored; and requirements for durability and functionality checks are codified.

2. Duration Versus Capacity

Comment: HHS received ten comments on the proposal to rate these respirators by capacity rather than by duration, as has been done historically. Several of these commenters acknowledged that rating CCERs according to their duration of breathing air poses problems for users in the field, because, for example, 1-hour rated units often do not provide 1 hour of air. One commenter in particular noted a concern that ''miners have historically complained about units that stop working prematurely,'' and that ''the criterion, 'good for one hour,' is misleading, at best.'' Two commenters said the change from duration to capacity ratings will aid in the selection of CCERs for specific industrial applications and will benefit physiologists and other knowledgeable professionals. However, many commenters claimed the change would be confusing to users and one commenter noted this would be especially true where other self-contained breathing apparatus used in the same workplace were still rated by duration. Some asserted that no evidence exists to justify the need for such a change. Two of these commenters opposing the change were among those who also acknowledged that certifying CCERs according to duration is problematic and potentially dangerous, as discussed above. One commenter asserted that the proposed change is inconsistent with the rating system for every open- and closed-circuit escape respirator in the world. Several commenters requested that the final rule prescribe ''common sense'' instructions intended for use by the end-user, to provide a ''rule of thumb'' example of the relationship between capacity and duration. One commenter was particularly concerned that the change to a capacity rating system will undermine the current 1-hour duration standard for respirators used in underground coal mines, and sees no benefit to miners of having information about capacity rather than duration. This commenter suggested that the formula for assessing duration is not rigid enough to ensure a full 1-hour duration and referred to complaints by miners that, at times, units have appeared to stop working prematurely or failed to function during escapes. The commenter requested that HHS establish in the rule that units of less than 1-hour duration cannot be used as a substitute for 1-hour units. Finally, one respondent further commented that capacity-based certification could result in conflicts under the Rail Safety Improvement Act (RSIA) of 2008; another expressed concern that capacity-based certification could result in conflicts with ISO 23269–1:2008 *Ships and marine technology—Breathing apparatus for ships—Part 1: Emergency escape breathing devices (EEBD) for shipboard use.*

Response: HHS has considered these comments carefully, and has decided to retain the provision that approved devices will be classified according to capacity in the final rule. Because the duration of adequate breathing gas supply actually provided to a user by a CCER will depend on the degree of exertion involved in the particular escape and the size of the respirator user, HHS believes the change from an approval based on duration to one based on capacity is important. The present duration rating is misleading and potentially dangerous to users. The capacity rating system in the final rule provides important information to those selecting CCERs that will permit them to decide which respirator meets their needs.

The final rule establishes a 3-capacity ratings system: ''Cap 1,'' ''Cap 2,'' and ''Cap 3.'' Cap 1 provides 20 to 59 liters of oxygen for short escapes that could be accomplished quickly; Cap 2 provides 60 to 79 liters for escapes of moderate distance; and Cap 3 provides 80 or more liters for the lengthiest escapes. The three capacity ratings correspond to the liter quantities of breathing gas supplies that are expended during the NIOSH capacity testing within approximately 10, 30, and 60 minutes, respectively.

As several commenters recognized, there is evidence that the present duration system causes the user to believe that the apparatus will last for a specific time, regardless of the user's weight, physical condition, or activity.[14] This is not an accurate interpretation. Relying on a 1-hour unit to supply 1 hour of oxygen to all users under all circumstances can lead to inappropriate deployment and misuse in emergencies.

It is important to remember that a CCER contains a fixed quantity of oxygen; the duration of the oxygen it ultimately supplies will be inversely proportional to its rate of use. A CCER will operate for a shorter duration when the oxygen consumption rate is high. Hypothetically, a 190-pound man, at rest, is estimated to consume a volume of oxygen of .5 liters per minute. If he were walking in an upright position at 3 miles per hour, it is estimated that he could consume 1.18 liters per minute. The same man running in an upright position at 5 miles per hour is estimated to consume 2.72 liters per minute.[15]

Under the final rule, NIOSH will measure the capacity of a CCER in terms of the volume of oxygen, in liters, that the CCER effectively delivers for consumption by the user. The final rule will require the manufacturer to list on its label the liters of oxygen actually delivered to the user as measured during the NIOSH capacity testing (see § 84.304(e)).

This information will enable employers to readily compare differences in respirator capacity within a given rating, more closely match a respirator model to their particular needs, and choose the respirator model that best serves their employees. An employer might determine through simulation or analysis of possible escape scenarios that its employees will need a Cap 3 CCER model that provides 95 liters to allow for the worst contingencies. Alternatively, an employer might determine that a Cap 3 model that provides 80 liters is sufficient and better designed, in terms of physical dimensions or operational characteristics of its workplace, to accommodate the routine work tasks and escape contingencies of the employees. HHS believes that providing the employers and the other professionals doing this analysis with information as to the general capacity of the unit (low (Cap 1), moderate (Cap 2) and high (Cap 3)) and the actual least achieved quantity of oxygen the specified CCER will supply will greatly aid in their ability to select the proper respirator.

This change to capacity rating will not result in a rating system that is inconsistent with how other countries classify or are considering classifying similar types of self contained breathing apparatus. The European Norms (EN standards) currently categorize open- and closed-circuit self-contained breathing apparatus (a type of respirator similar to the CCER but used for entry

[14] See, e.g., U.S. Mine Safety and Health Administration. *Report of Investigation: Fatal underground coal mine explosion; January 2, 2006; Sago Mine, Wolf Run Mining Co.; Tallmansville, Upshur County, WV.* ID No. 46–08791.

[15] Kamon E, Bernard T, Stein R. Steady state respiratory responses to tasks used in Federal testing of self-contained breathing apparatus. *AIHAJ.* 1975;36:886–896.

as well as escape) by volume and pressure of breathing gas;[16] users decide what size unit best meets their application. Moreover, while CCERs are currently certified in Europe according to the duration of oxygen provided by a unit, the International Standards Organization, whose standards are intended to replace this current system, is also considering a change to capacity ratings. HHS plans, in future rulemakings, to move toward this capacity rating system for other self-contained breathing apparatus that it regulates.

HHS will not require manufacturers to provide users with capacity versus work activity information, although manufacturers are not prohibited from providing such information. However, HHS does not encourage or support the provision of such information, as it may misinform CCER users about the actual amount of oxygen available to them in any given escape, as discussed in the notice of proposed rulemaking.[17] Employers and their employees should test CCERs in realistic scenarios and engage in appropriate training to identify CCER models that meet their needs and to establish a clear understanding of related performance factors. In particular, training is essential for the employees to understand that the duration of time that they receive protection from the device varies according to the actual amount of oxygen in the unit and the rate of oxygen use which depends on the escape conditions and the employee's body size and the employee's physical condition.

With regard to the use of CCERs in coal mines, the record of perceived and actual failures in coal mining played a substantial role in instigating these improvements in respirator certification standards. CCERs intended for use in mines will be so identified in the NIOSH application for approval and subject to man test 4 as a condition of MSHA co-approval. In addition to Cap 3 devices, Cap 1 and Cap 2 devices may be very appropriate for certain deployment conditions. This deployment issue is not subject to HHS regulation or oversight.

With regard to the RSIA, the regulations required under that statute concerning the use of emergency escape breathing apparatus (nomenclature used by the railroad industry) have not yet been promulgated. There is no reason to believe, however, that the capacity rating to be implemented under this final rule would be problematic with respect to such regulations. Similarly, with regard to the maritime consensus standard, ISO 23269–1:2008, HHS does not find any element of this final rule to conflict with the standard, which is more restrictive than this rule. The maritime industry would not be prevented from identifying CCERs as having a service duration of at least 10 minutes, as specified under its consensus standard.

3. Capacity Ratings

Comment: HHS received several comments concerned with the capacity ratings themselves, and the values proposed to achieve them. Two comments questioned the proposed work rates for Cap 1 and 2 capacity testing; in particular, the comments claimed that no evidence supports the Cap 1 and 2 work rates. One comment disputed the use of the 1975 Kamon study[18] to justify the proposed work rates, and also argued that a 2005 University of Maryland study,[19] which found that exceptionally high work rates can exhaust current 60-minute CCERs in far less than 60 minutes, provides evidence that the proposed capacity work rates for Cap 1 and Cap 2 CCERs would require that these CCERs increase in size and weight. Another comment proposed adding two capacity ratings, and modifying Cap 3 oxygen capacity to range from $80 \leq L \leq 89$. Finally, one comment suggested that the ventilation rate for Cap 1 devices is contrary to experience with open-circuit escape respirators that function with lower ventilation rates.

Response: With regard to the Cap 1 and 2 work rates, higher sustained work rates over shorter durations are fully supported by human physiology research as cited in the proposed rule[20] and by the Kamon study. While the commenter notes the discrepancy between the values determined by Kamon and the values applied in this rule, Kamon cautioned that his data presented ''do not include the effects of a breathing apparatus,'' and thus ''represents a *minimum* of the oxygen requirements.''[21] HHS has taken into account the increased work rate demands associated with the use of a breathing apparatus and with the physiological limits defined by research. The work rates in this final rule, including the higher rates specified for lower capacity devices, were supported by the Navy in their comments during the concept development stage of this rulemaking.[22] The Navy makes extensive use of these lower capacity CCERs and expects them to be designed to support the high exertion levels expected for sailors escaping during below-deck emergencies.

With regard to the University of Maryland study, NIOSH notes that CCER capacity testing will be determined ''depending on the capacity specified by the manufacturer.''[23] Thus, for example, a device identified as an 80 liter unit by the manufacturer will be tested at the Cap 3 work rate (1.35 VO_2 liters/minute), not at the high work rate tested in the University of Maryland study. The study does not provide any indication of size or weight changes to CCERs that might be produced in response to this final rule. It does validate the basis indicated by HHS for changing from a duration-based rating system to one that is capacity-based by demonstrating that test subjects of differing sizes and walking at variable speeds will not receive the same duration of breathable oxygen. The study reinforces the point that the only reliable metric for rating a respirator's capacity is the quantity of oxygen supplied by the respirator.

HHS has retained in this final rule the 3-tier rating system proposed. Since the actual liters of oxygen capacity achieved during testing by NIOSH will be specified on the label of the respirator, more capacity rating categories would be unnecessary. Nor would finer categorical distinctions be meaningful with respect to the differing escape contingencies or the need for further testing differences contingent on such distinctions. The three broad categories sufficiently delineate low, medium, and high capacity devices as general reference points for purchasers to identify devices potentially suited to the emergency needs of their employees. Similarly, they sufficiently delineate capacity for the assignment of appropriate testing regimens.

The current ventilation rate for testing open-circuit escape respirators is not a

[16] See European Standard BS EN 137:2006. *Respiratory protective devices—Self-contained open-circuit compressed air breathing apparatus with full face mask—Requirements, testing, marketing.* British Standards Institute.

[17] 73 FR 75,027 at 75,032 (December 10, 2008).

[18] Kamon E, Bernard T, Stein R. Steady state respiratory responses to tasks used in Federal testing of self-contained breathing apparatus. *AIHAJ.* 1975;36:886–896.

[19] Johnson, AT. A review of self-contained self-rescuer research. University of Maryland, Biological Resources Engineering, Human Performance Laboratory; 2005.

[20] Louhevaara V, *et al.* Cardiorespiratory strain in jobs that require respiratory protection. *Int. Arch. Occup. Environ. Health.* 1985;55:195–206. Lemon PW and Hermiston TT. The human energy cost of fire fighting. *J. Occup. Med.* 1977;19:558–562.

[21] Kamon E, Bernard T, Stein R. Steady state respiratory responses to tasks used in Federal testing of self-contained breathing apparatus. *AIHAJ.* 1975;36:886–896 [emphasis in original].

[22] 73 FR 75,027 at 75,033 (December 10, 2008).

[23] 73 FR 75,027 at 75,042 (December 10, 2008).

consideration for determining the rate to be applied to testing Cap 1 devices under this final rule for CCERs. As discussed above, the rates for CCERs are based on physiological capacity. The current rate for open-circuit escape respirators is a matter that will be considered in future rulemaking addressing that different technology.

4. Achieved Capacity

Comment: HHS received one comment regarding how the capacity rating is assigned. The commenter suggested that the rating be based on the average of the seven units tested, rather than on the least value achieved by the seven units tested using the breathing and metabolic simulator as proposed, and that all of the values should be within the capacity rating requested by the applicant. The commenter recommended corresponding text edits to § 84.304(e).

Response: HHS has retained in the final rule the approach presented in the proposed rule to use the least value achieved by the seven units tested. The use of the breathing and metabolic simulator to conduct these tests will indicate variability attributable to the CCER. HHS is using the lowest capacity demonstrated by testing to err on the side of safety. This conservatism is particularly important considering the small number of units being tested.

M. Section 84.305 Performance Test Requirements

1. Performance Testing

Comment: HHS received one comment requesting the rate of speed and incline of the treadmill test (§ 84.305(a)(3)). Another commenter offered that the rule should require evaluation of the quality of the breathing gas at the first inhalation by the user.

Response: Manufacturers must calibrate the treadmill to the specific physiology of each test subject. This standard is work rate, not exercise driven. So, for example, a smaller subject will require a steeper grade and faster speed than a larger subject to achieve the same work rate.

HHS agrees that a performance standard might be appropriate for governing the quality of the breathing gas supplied by a CCER at the first inhalation. Such performance parameters and related testing have yet to be developed but the possibility will be evaluated for future rulemaking.

2. Work Rates

Comment: HHS received a number of comments addressing the proposed performance test work rates; two suggested that the work rates are not supported by data. One of these commenters questioned why NIOSH has not conducted empirical testing of realistic mine escapes. Another commenter suggested modifying the proposed work rate test sequence to repeat only the high and low work rates, rather than cycling through the peak (highest) work rate as well. This commenter also recommended that units that are exhausted before the completion of the full test sequence only be permitted to continue with testing if the entire initial peak flow test was successfully completed. One commenter expressed concern that the 30-minute performance test will not provide accurate performance data for ''shorter duration'' units, and offered the example that some carbon dioxide scrubbers absorb less in the first minute of operation; if multiple units were required for completion of the test sequence, higher concentrations of carbon dioxide would result each time a new unit replaced a spent unit, thus skewing the test results. This commenter suggested that HHS design a test for the capacity of the unit being tested, rather than requiring the testing of multiple units. Finally, one commenter asserted that the work rates for Cap 1 and 2 devices can only be met by large increases in the sizes of units.

Response: The performance tests are applicable to all uses of CCERs, representing realistically achievable and varying work rates for each category of devices (Cap 1 through Cap 3). Lower work rates would result in smaller, lighter devices more suitable for carrying, but if using such a device stresses the wearer beyond the human tolerance level, it may very well fail to meet their need for a successful escape.

The performance test is a composite test including both high and low work rates intended to draw into use all the components of the apparatus, including the demand and relief valves. According to physiological research [24] as well as common experience, the higher the work rate, the less time one can sustain that work rate. Accordingly, NIOSH is applying a high work rate for 5 minutes and then a lower work rate for 15 minutes. This protocol tests the ability of the carbon dioxide absorbent canister to absorb high rates of exhaled carbon dioxide and the accompanying breathing pressures at a high ventilation rate, due to both the canister and the demand valve. Reducing the work rate after 5 minutes reflects human physiological limits while examining the performance of the carbon dioxide absorbent in a low demand mode.

The work rates in the standard were not intended to simulate an escape. There are an infinite number of escape scenarios, ranging from walking at a very slow pace, feeling one's way out of the mine while impeded by heavy smoke and debris to running at speed or carrying an impaired victim. Given the impossibility of conducting representative simulations, NIOSH selected reasonable, scientifically-evaluated limits of likely human performance [25] which are consistent with NIOSH's own laboratory experience.[26] A well-established model developed by physiologists (the Bink-Bonjer curve) predicts that 95th percentile miners can maintain 3.0 liters/minute VO_2 for 30 minutes and 2.0 liters/minute VO_2 for 160 minutes. Accordingly, the peak work rate value is set at 3.00 VO_2, which reflects a very high work rate attainable by an average adult. The high work rate is set at 2.00 VO_2, which represents a reasonably hard work rate. Longstanding laboratory testing of respirator users by NIOSH supports this work rate, which is expected to exceed the work rate experienced by users during escape under oxygen.[27] The low work rate is set at 0.50 VO_2, which represents a sedentary rate. NIOSH laboratory testing experience also supports this work rate, which is expected during escape under oxygen when the wearer is sedentary, as if awaiting rescue. With regard to the conduct of empirical studies, NIOSH has not conducted further research as suggested.

The performance test requirements are suitable for Cap 1 units and do not require a specialized test sequence. As discussed above, the purpose of the performance test is to ensure that an apparatus is able to provide life support to a user at high work rates for

[24] Bink B. The physical working capacity in relation to working time and age. *Ergonomics.* January 1962;5:25–28.

[25] See U.S. Air Force School of Aerospace Medicine. *Physical fitness status of USAF firefighters.* Final Report ESL–TR–86–05; 1986. U.S. Bureau of Mines. *Biomechanical and work physiology study in underground mining excluding low coal.* Final Contract Report #J0308058; July 1984.

[26] Kyriazi N. Proposal for certification tests and standards for closed-circuit breathing apparatus. Pittsburgh, PA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; 1999. DHHS (NIOSH) Publication No. 99–144, IC 9449.

[27] Kyriazi N. Proposal for certification tests and standards for closed-circuit breathing apparatus. Pittsburgh, PA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; 1999. DHHS (NIOSH) Publication No. 99–144, IC 9449.

reasonable lengths of time, and to draw into use all the components of the apparatus that could be activated by a user, in order to ensure that stressor levels do not exceed human tolerances. If an apparatus contains <45 L of oxygen, more than one unit must be tested in order to be able to evaluate the relief valve which may not yet have been used. For example, testing a CCER which has approximately 24 L of oxygen would theoretically result in that unit running out of oxygen 4.5 minutes into period 2. This will sufficiently test the demand valve and carbon dioxide absorbent canister; however, the pressure required to operate the relief valve will still be unknown. Therefore, a second unit would have to be tested at the sedentary work rate (0.5 liters/minute VO_2) in order to evaluate the characteristics of the relief valve.

The 1-minute average carbon dioxide measurement will not be tested cumulatively over the duration of multiple units; carbon dioxide cannot accumulate during testing and skew the test results, as suggested by one commenter. If the first unit tested fails to scrub carbon dioxide within the first minute at a 3-liter per minute demand, it will not pass the test; testing will conclude at that point, eliminating the need for multiple units.

With respect to the comment that Cap 1 and Cap 2 devices would have to be larger than currently available devices to perform adequately under the proposed work rates for capacity testing, HHS does not believe this is accurate. At least one currently approved device meets the capacity requirements specified for a Cap 1 rating. This also suggests that higher capacity devices intended for the Cap 2 and Cap 3 ratings would also not need to be larger than currently approved devices and certainly manufacturers have market incentive to minimize size and weight at any given capacity.

3. Hypoxia

Comment: One commenter supported the proposed hypoxia testing, but requested that HHS address the problem posed by the utilization of units of different designs on user proficiency. Another stated that the hypoxia test could not be conducted on designs that include an initial oxygen starter, and suggested that the rule follow the hypoxia test with activation of the starter. Finally, a commenter opposed the hypoxia test on the grounds that the expectation by NIOSH that some users would exhale into a unit in opposition to manufacturer instructions, is an ''arbitrary assumption.'' This commenter also stated the performance test should be conducted in accordance with approved donning procedures for chemical oxygen units, including cold start procedures without the use of oxygen starters.

Response: HHS does not have authority to govern whether CCERs from multiple manufacturers or otherwise of different designs can be used in a single locale or workplace, although the Department does recognize that problems can arise from this situation. The assumption that some users will inappropriately exhale into a CCER upon donning it or in an attempt to improve its performance is not arbitrary, and is supported by evidence from actual practice during emergencies. For example, in the MSHA investigation report on the Greenwich Collieries Number 1 mine explosion of 16 February 1984, the miners were asked the general question, ''Did you have any problems breathing after you put on the self-rescuer?'' Their testimony provides evidence that (1) some users do fill up the breathing bag apparatus with exhaled air, and (2) some users attempt to escape at an oxygen consumption rate higher than the apparatus' constant flow rate, which together cause the hypoxia scenario evaluated in the performance test. In the Department's judgment, it is important to evaluate the potential for the user to experience hypoxia. HHS is retaining the requirement that the performance test will begin with two exhalations and then follow the manufacturer's instructions, and has clarified in the rule text that the hypoxia test will be conducted upon initial donning.

NIOSH does agree with the commenter that the performance test should evaluate the ability of chemical oxygen units to function using a cold (manual) start procedure. Accordingly, NIOSH will begin the hypoxia test with sufficient breaths to start chemical units without the benefit of their oxygen starters. Since not all CCER designs employ oxygen starters and this is a very specific testing protocol detail, it is not specified in the rule text.

N. Section 84.306 Wearability Test Requirements

Comment: HHS received three comments addressing wearability testing: One suggested that test subjects should receive instruction in the use of the CCER prior to testing their ability to don it within the 30-second limit. The other two comments requested that HHS address the potential need to ''cold-start'' a second unit when transitioning between units while in a toxic environment. Cold starting means exhaling sufficiently into a unit to stimulate the oxygen supply when the oxygen starter has malfunctioned.

Response: The intent of the provision of concern is to ensure that the CCER can be donned and fully functional (under oxygen) within 30 seconds. Test subjects will be provided with the manufacturer's instructions for donning and will be trained in their use, but an integral part of this test will be to observe the effectiveness of the supplied instructions; therefore, NIOSH will not supplement the manufacturer's instructions with any further information.

A cold start is an aberrant situation but may not be a critical failure; depending on the system design, the CCER may still provide protection even if the user has to take additional steps to stimulate an increase in the level of oxygen supply. Nevertheless, this wearability test will require that CCERs that make use of oxygen starters can be donned and operational within the 30-second limit, irrespective of whether the oxygen starter functions.

O. Section 84.307 Environmental Treatments

Comment: HHS received one general comment suggesting that evidence to support the proposed environmental treatments is lacking. The same commenter noted that the proposed rule does not address the environmental conditions in other industrial applications aside from mining.

Response: The environmental treatments are not intended to be accelerated aging tests or to replicate the most severe field conditions in which units might be deployed. The purpose of these treatments is to expose CCERs to realistically harsh conditions representative of many industrial applications in order to assess that they are reasonably robust for their intended uses. HHS believes that these treatments are adequate for this purpose.

1. Humidity

Comment: Two comments recommended adding a test of humidity resistance.

Response: NIOSH will conduct a review to examine potential impact of humidity on CCER capacity or performance. If the review indicates that humidity degrades certain CCER designs within their expected service life, then HHS would consider further rulemaking to add such a requirement. Until such time, purchasers could use their acquisition processes to require humidity testing by manufacturers of designs they purchase, or conduct such testing through an independent testing laboratory, should they be concerned

about the potential impact of humidity in the environments where their CCERs are stored and worn.

2. Temperature

Comment: HHS received one comment asking for clarification on whether the extreme temperature storage test is designed to evaluate the effect of temperature shock by changing the test temperature applied to the CCER from one extreme temperature immediately to the other (hot to cold or cold to hot). This commenter suggested allowing the units to return to room temperature between testing steps.

Response: HHS agrees with the suggestion and has adopted it in the final rule. NIOSH did not intend to simulate temperature shock, which is not an expected environmental condition.

3. Shock

Comment: HHS received two comments regarding shock testing of CCER units. One commenter sought clarification regarding which six orientations are to be tested, and recommended that a diagram be included in the final rule. The second commenter requested clarification regarding whether the shock testing should be conducted with units packed in their stowage containers, or whether the testing is meant to simulate the unit being dropped while being removed from its packaging.

Response: The intent of the requirement is to test the CCER along its three principal axes: Top to bottom, left to right, and front to back. HHS has revised the text in the final rule to clarify the definition of these axes.

NIOSH intends for testing to be conducted in the packaging condition designed by the applicant for individual use while deployed. If the CCER is provided within a container intended for storage, versus the state in which it is worn on a belt, carried, or transported by the user, the unit would be removed from the storage container. The text of the final rule reflects this intent.

4. Vibration

Comment: HHS received one comment suggesting that vibration testing to high frequencies is not relevant if CCERs are properly stored or worn.

Response: HHS has retained the vibration testing in the final rule because CCERs deployed in the mining environment experience such vibration when set on or near certain mining equipment (e.g. continuous miners, mantrips). Exposure to vibration would also be expected in association with engines and other machinery on ships and in tunneling and other underground construction and maintenance operations as well as during the transportation of CCERs.

P. Section 84.308 Additional Testing

Comment: Three comments were received regarding issues not addressed in the proposed rule: Fire hazard attributable to the use of potassium superoxide and chlorate candles in chemical oxygen units.

Response: With regard to the potassium superoxide and chlorate candles used in some chemical oxygen units, while NIOSH is aware of the potential for this chemical to create a hazard, experience with CCERs has shown that such hazards are generally created by misuse or mishandling of a device. Potassium superoxide is not known to pose a hazard to the individual when the unit is properly worn on a belt, but has been known, for example, to ignite upon being crushed by mining machinery. Use of CCER designs that employ potassium superoxide and chlorate candles is not within the purview of HHS; HHS is not authorized to address safety issues related to the proper transport and storage of these respirators.

Comment: HHS received five comments regarding the provisions for eye protection. Two supported the proposed standards; two suggested that impact-resistant eye protection is not supported by end users and would increase the size of CCER units. A final commenter requested that goggles meet the high impact and flammability requirements of ANSI Z87.1–2003 *Occupational and Educational Personal Eye and Face Protection Devices* for maritime applications.

Response: All manufacturers provide eye protection with currently certified 1-hour CCERs. The requirement for reasonable durability according to the cited consensus standard (Sub-clause 3.1 of ISO 4855:1981, *Personal Eye Protectors—Non-Optical Test Methods*) is appropriate for the potentially physically challenging conditions while CCERs are belt-worn and during their use for an escape. NIOSH does not expect that compliance with this consensus standard would result in an increase in the size of the eye protection or, consequently, the CCER units in which they are stored.

HHS does not find that the high impact and flammability requirements of ANSI Z87.1–2003 are relevant to most escape scenarios. Under particular use conditions, more stringent performance requirements could be specified in the acquisition process if deemed necessary by the purchaser.

HHS has made clarifications to the text of § 84.308(c)(3) and (4) which indicate the intent of the durability and fogging tests. It is imperative for the users' vision to be unimpeded by the eye protection when attempting to use the respirator for an escape.

Q. Section 84.309 Additional Testing and Requirements for Dockable CCERs

Comment: One comment submitted to HHS supported the intent behind the dockable CCER provisions but was concerned that the provisions were not extensive enough. In particular, the commenter recommended HHS ''force'' the introduction of this new technology for use in the mining industry.

Response: The proposed provisions for dockable CCERs have been retained in the final rule. These provisions cover the apparent potential technical concerns associated with such technology that HHS has been able to identify. The use of this technology in mining is not regulated by HHS. Accordingly, this final rule includes provisions that will allow the approval of such devices, but does not include provisions to force the development of this technology and its introduction into the mining industry.

R. Section 84.310 Post-Approval Testing

Comment: HHS received various comments on post-certification testing of deployed CCERs. One commenter encouraged HHS to expand the program. Another supported the program but suggested that the government should not be obligated to replace units that it tests. In relation to the replacement of CCERs obtained by NIOSH for post-approval testing, another commenter questioned the ramifications of a manufacturer's decision to discontinue production of a certain unit, and whether manufacturers would be required to produce more of the discontinued units to replace those tested. Another commenter suggested that field evaluations do not accurately demonstrate the extent of problems associated with respirators in field, and suggested that at least 3 percent of all deployed units be tested at random. A final commenter suggested that the text of the rule specify that only units passing user inspection criteria should be examined in the post-certification testing.

Response: HHS has specified in the final rule under § 84.310(f) that manufacturers who discontinue a particular line of respirators selected for field evaluation can replace those units

with similar, NIOSH-approved CCERs. HHS does not intend for the replacement requirement to create any barriers to the market exit of a discontinued product. Furthermore, NIOSH would continue to purchase replacement units, as currently practiced and proposed. The cost of these field evaluations, which are carried out as part of the research and assurance function of the NIOSH respirator certification program, would not be appropriate to impose on CCER owners. NIOSH believes this life-cycle evaluation (inspection and testing) program, as enhanced by the provisions of this final rule, will continue to be an effective method for the early identification of possible problems in these respirators after deployment.

NIOSH randomly selects deployed CCER units for testing. The availability of resources has determined and will continue to determine the sample size. The evaluations select units from the field that are identified by the employer as having passed user inspection criteria; furthermore, the NIOSH evaluation itself begins with application of these same inspection criteria.

III. Summary of the Rule

This rule establishes new requirements for testing and approval of CCERs under a new Subpart O of 42 CFR Part 84—Approval of Respiratory Protective Devices. The new subpart replaces all current requirements for testing and approval of CCERs found under Subpart H. The following is a section-by-section summary which describes and explains the provisions of the rule. The complete, final regulatory text is provided in the last section of this notice.

In the summary below, HHS indicates the changes made in provisions of this rule since the notice of proposed rulemaking. These occur under §§ 84.300, 84.301, 84.302, 84.304, 84.307, 84.308, and 84.310.

A. Subpart O—Closed-Circuit Escape Respirators

1. Section 84.300 Closed-Circuit Escape Respirator, Description

This section provides a general description of the CCER as a class of respirator. It is intended to inform the public and to serve as a legal and practical definition for the purposes of the NIOSH and MSHA respirator approval program. In response to public comments, the definition of CCER now includes a brief description of respirator uses in the maritime and railroad industries, in addition to underground coal mining.

2. Section 84.301 Applicability to New and Previously Approved CCERs

This section establishes a 3-year period for continued manufacture and labeling of CCERs approved under the current regulations and sold by manufacturers in order to phase-in the implementation of the testing and approval requirements of this final rule. This provision, which is changed slightly from the proposed rule, allows respirator manufacturers a reasonable period of time to modify existing CCER designs, if necessary, or to develop entirely new designs that respond to the new testing and certification requirements. It also ensures that during the interim, a constant supply of approved CCERs will remain available for purchase. The new requirements will be applied to all new CCER designs that are submitted for approval after the effective date of this rule. Manufacturers may continue to manufacture and label as NIOSH-approved and sell CCERs with current approvals for up to 3 years after the effective date.

As discussed in the public comment section of the preamble above, HHS has eliminated from the final rule the proposal that currently approved CCERs be re-approved under the new requirements of this final rule to retain their approval beyond a 6-year grandfather period. CCERs with current approvals that are already deployed or are manufactured and labeled NIOSH-approved within the 3-year phase-in period will remain as NIOSH-approved devices until the conclusion of their service life.

3. Section 84.302 Required Components, Attributes, and Instructions

This section specifies the components, attributes, and instructions required for each CCER. Some of these requirements simply continue the current Subpart H requirements, including the requirements for eye protection (paragraph (a)(1)); oxygen storage vessel (paragraph (a)(4)); and general construction (paragraph (c)).

Paragraph (a)(2) requires that manufacturers include thermal exposure indicators to allow a person to determine whether the unit has been exposed to temperatures that exceed any temperature storage limits specified by the manufacturer. Currently, one manufacturer includes such indicators in response to NIOSH evaluations finding that exceptionally low and high storage temperatures degrade the functionality and performance of certain CCER designs. Adverse effects of low temperature storage on current products are reversible, but high storage temperatures can damage critical internal CCER components, as documented in the manufacturers' service life plans. There must be a means to detect and replace units exposed to such storage conditions.

Paragraph (a)(3) requires that manufacturers include a means by which a person can detect any damage or alteration of the chemical oxygen storage or chemical carbon dioxide scrubber that could diminish the NIOSH-certified performance of the unit or pose a hazard to the user. These chemical components of CCERs, as presently designed, are susceptible to such degradation.[28] Two manufacturers currently design their CCERs with a means of detecting such damage.

Paragraph (a)(4) maintains an existing requirement under Subpart H that if a CCER includes an oxygen storage vessel, the vessel must be approved by the U.S. Department of Transportation (DOT) under 49 CFR Part 107: ''Hazardous Materials Program Procedures,'' unless exempted under Subpart B of the DOT regulation.

Paragraph (a)(5) requires that manufacturers design and construct the protective casing of the CCER to prevent the user from accidentally opening it and to prevent or clearly indicate its prior opening, unless the CCER casing were designed for such openings, for inspection or purposes other than use in an actual escape. These protections are needed because the opening and re-closing of a unit not designed for such operations, and the replacement of parts not intended for replacement, can damage the unit and degrade its performance. NIOSH has investigated circumstances in which units were opened and modified by unauthorized persons, effectually altering the design from the version that received NIOSH testing and certification.[29]

Paragraph (a)(6) requires that manufacturers include a means to detect the ingress of any water or water vapor that could degrade the performance of the unit, unless the CCER was designed for its casing to be opened for frequent inspection. Because the chemical

[28] Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: seventh-phase results.* Pittsburgh, PA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; March 2002. DHHS (NIOSH) Publication No. 2002–127, RI 9656.

[29] Kyriazi N, Shubilla JP (2000). *Self-contained self-rescuer field evaluation: sixth-phase results.* Pittsburgh, PA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; July 2000. DHHS (NIOSH) Publication No. 2000–128, RI 9451.

components of CCERs are especially susceptible to damage or degradation from moisture, the user must be able to readily and reliably check a unit for potential water damage before each work shift.

Paragraph (a)(7) is new (as discussed above), and requires that manufacturers provide a means to detect damage or deficiencies to units with oxygen starters if they are a component critical to the satisfactory performance of the CCER.

Paragraph (b) requires that an indicator must clearly and unambiguously indicate the occurrence of the monitored condition.

Paragraph (c) requires that manufacturers provide NIOSH with information about indicators, where they are required, to enable thorough evaluation by NIOSH. Such information should include an explanation of the operation and function of the indicator, data generated by the manufacturer, and any equipment or special devices used by the manufacturer to develop or test the indicators.

Paragraph (d) mandates that CCER components must meet the general construction requirements in § 84.61.

Paragraph (e) requires that manufacturers construct the CCER to protect the user from inhaling most toxic gases that might occur in a work environment during an escape. To ensure such gases cannot readily penetrate the breathing circuit of the CCER during its use, NIOSH will test the integrity of the CCER breathing circuit by following the gasoline vapor test procedure for breathing bags available from the NIOSH Web site *http://www.cdc.gov/niosh/npptl.* The test will be conducted on a single CCER unit.

The specified gasoline vapor test provides reasonable assurance that the breathing gas supply of the user will be protected from atmospheres that include hazardous vapors possibly associated with escapes from mines and most other enclosed or confined spaces. The proposed requirement for this testing is not new. It is included under Subpart H of this part (§ 84.85) for all self-contained breathing apparatus (the class of respirators to which CCERs belong) currently approved by NIOSH.

Paragraphs (f) and (g) require that the design, construction, and materials of CCERs not introduce combustion or other unspecified safety or health hazards.

In response to public comments, paragraph (h) requires that manufacturers provide purchasers with instructions, rather than requiring instructions to accompany each individual unit, as was proposed in the notice of proposed rulemaking. A service life plan must accompany each application to NIOSH for CCER approval. These requirements generally reflect current practice.

In response to the public comment regarding labeling, paragraph (i) requires manufacturers to identify on each CCER approval label the capacity rating and number of liters of oxygen as determined by NIOSH through capacity testing.

4. Section 84.303 General Testing Conditions and Requirements

This section establishes the general testing conditions and requirements for the approval of CCERs.

Paragraph (a) specifies that NIOSH will use the breathing and metabolic simulator tests specified in this subpart for all quantitative evaluations of the performance of a CCER. NIOSH will use human subject tests for qualitative evaluations, which include evaluations of the ''wearability'' of the CCER design (e.g., ergonomic considerations concerning its practical impact on the user's escape).

Breathing and metabolic simulators are mechanical devices that simulate human respiratory functions.[30] They allow for precisely controlled and monitored tests, whereas comparable testing conducted using human subjects on a treadmill involves substantial variability with respect to one or more metabolic parameters. The use of these simulators to evaluate respirator performance has been validated by NIOSH through a series of MSHA peer-reviewed studies over the past 20 years.[31] These studies, which include side-by-side comparisons using three-person panels of human subjects on treadmills against testing using an ABMS, demonstrate that the simulator replicates the performance of human subjects with respect to all important metabolic variables, including oxygen consumption rate, average rates of carbon dioxide production, ventilation rates, respiratory frequencies, respiratory temperatures (dry- and wet-bulb), and breathing pressures. An advantage of the simulators is that their performance for all metabolic parameters can be calibrated and replicated, whereas each human test subject performs uniquely, making the testing more difficult to replicate.

Manufacturers and others who would wish to duplicate NIOSH breathing and metabolic simulators in their own testing facilities can obtain technical specifications from NIOSH. General, non-proprietary information on the design and operation of the simulators is also available from the NIOSH Web site: *http://www.cdc.gov/niosh/npptl.*

Paragraph (b) specifies that 4 stressors will be monitored constantly throughout testing: The average concentrations of inhaled carbon dioxide and oxygen, peak breathing pressures at inhalation and exhalation, and the wet-bulb temperature (the temperature of inhaled breathing gas as would be? sensed by the CCER user's trachea). Paragraph (d) establishes that CCERs must perform within the acceptable ranges of measurement specified in Table 1 below.

[30] Kyriazi N. *Development of an automated breathing and metabolic simulator.* Pittsburgh, PA: U.S. Department of the Interior, Bureau of Mines; 1986. IC 9110.

[31] Kyriazi N, Kovac JG, Shubilla JP, Duerr WH, Kravitz J. *Self-contained self-rescuer field evaluation: first-year results of 5-year study.* Pittsburgh, PA: U.S. Department of the Interior, Bureau of Mines; January 1986. RI 9051.

Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: results from 1982–1990.* Pittsburgh, PA: U.S. Department of the Interior, Bureau of Mines; January 1992. RI 9401.

Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: fourth-phase results.* Pittsburgh, PA: U.S. Department of the Interior, Bureau of Mines; January 1994. RI 9499.

Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: fifth-phase results.* Pittsburgh, PA: U.S. Department of Energy; December 1996. RI 9635.

Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: sixth-phase results.* Pittsburgh, PA: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; July 2000. DHHS (NIOSH) Publication No. 2000–128, IC 9451.

Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: seventh-phase results.* Pittsburgh, PA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; March 2002. DHHS (NIOSH) Publication No. 2002–127, RI 9656.

[32] Wet-bulb temperature is a measurement of the temperature of a wet surface. It represents the temperature of the inhaled breathing gas in the CCER user's trachea.

TABLE 1—MONITORED STRESSORS AND THEIR ACCEPTABLE RANGES

Stressor	Acceptable range operating average	Acceptable range excursion
Average inhaled CO_2	<1.5%	≤4%.
Average inhaled O_2	>19.5%	≥15%.
Peak Breathing Pressures	$\Delta P \leq 200$ mm H_2O	$-300 \leq \Delta P \leq 200$ mm H_2O.
Wet-bulb temperature.[32]	<43 °C	≤50 °C.

The acceptable ranges for inhaled carbon dioxide were determined by physiological testing performed at the Noll Lab for Human Performance Research at Pennsylvania State University. This research showed no disabling physical effects in active men breathing 5 percent carbon dioxide for long periods of time.[33] Decision-making was slightly impaired in some subjects after breathing 4 percent carbon dioxide for 1 hour. NIOSH has found in the testing of escape respirators that carbon dioxide levels of 1.5 percent can be tolerated for the limited periods for which these devices are designed without any deleterious effect on the test subjects. Therefore, NIOSH requires the CCER to maintain the inhaled levels of carbon dioxide below 4 percent (as a 1-minute average) during all testing and below an average of 1.5 percent over the full duration of the test.

The normal, sea-level oxygen content of air is approximately 21 percent. The minimum acceptable operating average of 19.5 percent for inhaled oxygen that NIOSH requires the CCER to provide over the full duration of the certification tests was determined based on OSHA's respiratory protection standard 29 CFR 1910.134, which establishes a minimum level of oxygen for protecting the health and safety of workers. However, permitting oxygen levels to go as low as 15 percent enables size and weight reductions of CCERs with little user impact.[34] The acceptable range for these excursions was determined based on testing of pilots at various altitudes. This research indicates that judgment, reaction time, spatial orientation, and other cognitive processes begin to become impaired from chronic exposure at oxygen levels below 15 percent.[35] Therefore, NIOSH requires the CCER to provide levels of oxygen above 15 percent (as a 1-minute average) during all testing and above an average of 19.5 percent over the full duration of the test. These limits would provide assurance that the CCER user would never be prevented from escaping due to an insufficient concentration of oxygen in the breathing gas supplied by the CCER.

The acceptable ranges for wet-bulb[36] temperature are based on physiological research conducted at Pennsylvania State University. Researchers found the highest tolerable wet-bulb temperature of inhaled air was approximately 50 °C.[37] Based on such research and NIOSH findings from testing escape respirators, NIOSH establishes 50 °C as an excursion limit and 43 °C as an average operating requirement. Test subjects have found this temperature to be tolerable during the 1-hour certification tests.

The ranges for peak breathing pressures were determined based on physiological research indicating that most individuals can generate peak breathing pressures equaling or exceeding −300 to 200 mm of H_2O for only a short period of time.[38] Based on NIOSH findings from testing escape respirators, the 200 mm average operating requirement provides a tolerable limit for the duration of an escape. Use of these values as limits will allow most CCER users to escape without any constraint on their level of exertion. Users who cannot generate these pressures may be forced at some point to slow the pace of their escape.

In addition to establishing these stressor limits for testing, this section provides under paragraph (c) that capacity and performance tests conclude when the stored breathing gas supply has been fully expended. This is important because the adequacy of the performance of a CCER depends upon the user clearly recognizing when the breathing gas supply is expended. High carbon dioxide levels can deceive the user into believing the respirator is not working and hence to prematurely abandon use of the CCER during an escape. Designing CCERs so that carbon dioxide levels are controlled until the oxygen supply is fully expended will help ensure that a user can make use of all of the available oxygen.

This section also provides under paragraph (d)(2) that a CCER will fail a wearability test if a human subject cannot complete the test for any reason related to the CCER. Any design, construction, or performance attribute of a CCER that prevents a user from completing the wearability test will threaten the successful use of the CCER for an escape.

5. Section 84.304 Capacity Test Requirements

This section specifies the testing regime that will be used to rate and quantify the capacity of the CCER, in terms of the volume of oxygen that the respirator provides to the user. It ensures the CCER will provide the quantity as measured in the NIOSH testing as a constantly adequate supply of breathing gas, in terms of the stressors addressed in § 84.303 of this part. The capacity will be evaluated in terms of

[33] Kamon E, Deno S, Vercruyyen M. Physiological responses of miners to emergency. *Vol. 1—Self-contained breathing apparatus stressors.* University Park, PA: The Pennsylvania State University. U.S. Bureau of Mines contract No. J0100092; 1984:13.

[34] Paul MA, Fraser WD. Performance during mild acute hypoxia. *Aviation, Space, and Environmental Medicine.* 1994;65(10):891–899; Malkin VB. Barometric pressure and gas composition. *Foundations of Space Biology and Medicine,* Vol. II, Book 1: Ecological and Physiological Bases of Space Biology and Medicine. 1975 at 25–31; and Fowler B, Paul M, Porlier G, Elcombe DD, and Taylor M. A re-evaluation of the minimum altitude at which hypoxic performance decrements can be detected. *Ergonomics.* 1985;28(5):781–791.

[35] Fowler B, Paul M, Porlier G, Elcombe DD, Taylor M. A reevaluation of the minimum altitude at which hypoxic performance decrements can be detected. *Ergonomics.* 1985;28(5):781–791.

[36] For the same inhaled air temperature, the thermal load of humid air is higher than that of dry air. The maximum thermal load tolerated by a human being can be specified by many combinations of dry-bulb temperature and relative humidity, or by one wet-bulb temperature, for which the temperature is measured using a wet thermometer surface. Researchers have demonstrated that the wet-bulb temperature of the inspired air most accurately measures heat stress to the tissues of the mouth, as compared to temperature readings from an ordinary, dry thermometer, even when combined with the control of relative humidity. Kamon E, Bernard T, Stein R. Steady state respiratory responses to tasks used in Federal testing of self-contained breathing apparatus. *AIHAJ.* 1975;36:886–896.

[37] Kamon E, Bernard T, Stein R. Steady state respiratory responses to tasks used in Federal testing of self-contained breathing apparatus. *AIHAJ.* 1975;36:886–896.

[38] Hodgson JL. *Physiological costs and consequences of mine escape and rescue.* University Park, PA: The Pennsylvania State University. U.S. Bureau of Mines contract No. J0345327; 1993:19.

the volume of oxygen, in liters, that the CCER effectively delivers for consumption by the user. All volumes are given at standard temperature (0 °C) and pressure (760 mm Hg), dry, unless otherwise noted. This capacity can differ from the volume of oxygen stored by the CCER, some of which may be wasted rather than inhaled by the user, depending on the particular design of the CCER and the work rate of the user. A CCER will operate for a shorter duration when the oxygen consumption rate is high. Hypothetically, a 190-pound man, at rest, is estimated to consume a volume of oxygen of .5 liters per minute. If he were walking in an upright position at 3 miles per hour, it is estimated that he could consume 1.18 liters per minute. The same man running in an upright position at 5 miles per hour is estimated to consume 2.72 liters per minute.[39]

A 3-capacity ratings system is established in this section: ''Cap 1—Cap 3.'' Cap 1 provides 20 to 59 liters of oxygen for short escapes that could be accomplished quickly; Cap 2 provides 60 to 79 liters for escapes of moderate distance; and Cap 3 provides 80 or more liters for the lengthiest escapes. The 3 capacity ratings correspond to the liter quantities of breathing gas supplies that are expended during the NIOSH capacity testing within approximately 10, 30, and 60 minutes, respectively.

The Cap 3 rating is comparable to the current NIOSH-certified 60-minute rating for CCERs; 10-minute units provide approximately 25 liters of oxygen, comparable to a Cap 1. The oxygen consumption rate associated with this rating is the average rate demonstrated through NIOSH testing of the 50th percentile miner by weight (191 pounds) performing the 1-hour ''man test 4.''[40] The test is a series of laboratory-based physical activities similar to those involved in coal mine rescues and escapes, including vertical treadmill climbs, walks, runs, and carries and pulls of substantial weights. As discussed under II(C), however, the duration of adequate breathing gas supply actually provided to a user by a respirator of a given capacity rating will depend on the degree of exertion involved in the particular escape and the size of the respirator user. For this reason, as discussed under II(C), NIOSH believes the change from a certification based on duration to one based on capacity is important. Using the hypothetical example of the 190-pound man above, the following table provides a set of possible use durations for illustrative purposes. These are calculated based on a consideration of limited factors and ideal use conditions and would be unlikely to match actual durations achieved by users in actual or simulated escapes.

CAPACITY VERSUS WORK ACTIVITY

	Capacity 1 (20 liters)	Capacity 2 (60 liters)	Capacity 3 (80 liters)
At Rest (.5 L/minute)	40 minutes	120 minutes	160 minutes.
Run at 3 mph (1.18 L/minute)	17 minutes	51 minutes	68 minutes.
Run at 5 mph (2.72 L/minute)	7 minutes	21 minutes	28 minutes.

In addition to having a capacity rating system to categorize products, manufacturers will use the actual tested capacity of approved respirator models, which NIOSH will report to the manufacturer in increments of 5 liters, to specify more precisely the capacity of each product. This will enable employers to readily compare differences in respirator capacity within a given rating, more closely match a respirator model to their particular needs, and choose the respirator model that best serves their employees. For example, an employer might determine through simulation of escapes that employees will need a Cap 3 CCER model that provides 95 liters to allow for the worst contingencies. Alternatively, an employer might determine that a Cap 3 model that provides 80 liters is sufficient and better designed, in terms of physical dimensions or operational characteristics, to accommodate the routine work tasks and escape contingencies of the employees.

The capacity testing will evaluate seven CCER units using the breathing and metabolic simulator. Three will be tested in the condition received from the applicant (i.e., ''new'' condition), two will receive environmental treatments prior to capacity testing, and the remaining two units will be tested at the cold-temperature limit specified by the manufacturer, after being stored at the specified temperature.

Each unit will be tested at the work rate identified in Table 2 below, according to the capacity level designated by the applicant. In terms of the rate of oxygen usage, carbon dioxide production, ventilation rate, and respiratory frequency, the work rates are representative of the average work rate that the typical CCER user might sustain during an escape, based on laboratory physiological testing involving miners.[41] As Table 2 shows, the greater the capacity of the CCER, the lower the work rate that would be used to test the CCER, reflecting the lower average rate of exertion that the typical user would be capable of sustaining for escapes of longer duration. Low capacity devices are likely to be used for short, very challenging escapes that would induce exceptionally high work rates. NIOSH finds it is appropriate to apply a work rate that represents the level of exertion sustainable by a typical user while using a device of a particular capacity. Hence, NIOSH specifies such an approach in this rule.

One of the units submitted will be tested by a human subject on a treadmill. The purpose of this human test is to provide assurance that the simulator is reasonably measuring the capacity of the respirator as it would be expended in actual use.

[39] Kamon E, Bernard T, Stein R. Steady state respiratory responses to tasks used in Federal testing of self-contained breathing apparatus. *AIHAJ.* 1975;36:886–896.

[40] See 42 CFR 84.100, Table 4 for the specific requirements of man test 4.

[41] Kamon E, Bernard T, Stein R. Steady state respiratory responses to tasks used in Federal testing of self-contained breathing apparatus. *AIHAJ.* 1975;36:886–896.

TABLE 2—CAPACITY TEST REQUIREMENTS

Capacity rating	Capacity (L of O_2)	VO_2 (L/min)	VCO_2 (L/min)	Ve (L/min)	RF (Breaths/min)
Cap 1	20 ≤ L ≤ 59	2.50	2.50	55	22
Cap 2	60 ≤ L ≤ 79	2.00	1.80	44	20
Cap 3	L ≥ 80	1.35	1.15	30	18

VO_2 = volume of oxygen consumed per minute; VCO_2 = volume of carbon dioxide produced per minute.
Ve = ventilation rate in liters of air per minute; RF = respiratory frequency.

In addition to this standard testing regime to be used for all CCERs, when testing CCER models to be co-approved with MSHA for use in coal mines, NIOSH will also continue to conduct the appropriate man test 4 protocol discussed above for determination of the suitability of these CCERs to be used in U.S. underground coal mines. This testing is the same as is required under the current 42 CFR Part 84 regulations. The Federal Mine Safety and Health Act requires that ''no mandatory health or safety standard * * * shall reduce the protection afforded miners by an existing mandatory health or safety standard.'' [42] The use of the capacity rating system and associated tests to approve equipment for use in underground coal mines will not constitute a reduction in protection or a reduction in the duration of breathing supply regulated under the current MSHA duration requirements for self-contained self-rescuers. Nevertheless, NIOSH and MSHA agree that the continued use of man test 4, as a supplement to the final new testing requirements and capacity rating system, will be the most practical method demonstrating such compliance with the cited provision of the Federal Mine Safety and Health Act. The Cap 3 unit approved for use in mining also meets the 1-hour requirement and the Cap 1 and Cap 2 units approved for use in mining also meet no less than the 10-minute requirement under MSHA's existing standards.

6. Section 84.305 Performance Test Requirements

This section specifies the performance testing regimen that will be used to certify the ability of the CCER to provide a constantly adequate breathing supply for the user immediately upon donning and under varied work rates, including a level representative of peak demand and minimal demand. The high work rates used during the test will activate the demand valve, if present in the CCER model, and stress the carbon dioxide absorbent. The low work rate would activate the relief valve, if present. The test includes a procedure (immediate exhalation into the unit upon donning) to evaluate the potential for the user to experience hypoxia (a deficient oxygen concentration) upon donning the CCER. Hypoxia could occur with a CCER using compressed oxygen and a demand valve if the user forces enough nitrogen into the breathing circuit to prevent the activation of the demand valve and the user had consumed more oxygen than the constant quantity supplied by the CCER. Such a situation is more likely to arise if a CCER user is not adequately trained in its use.

Many CCER users are trained to exhale into a CCER upon donning it because this is the recommended practice for CCERs supplied with chemical oxygen if the oxygen starter fails. In an emergency, it is likely that some users will exhale into the CCER regardless of its design, in which case NIOSH needs to ensure that the respirator will perform adequately. For this reason, NIOSH is establishing a generic performance testing protocol, irrespective of CCER design, that includes the hypoxia testing procedure in which the test will begin with two exhalations into the unit at the specified ventilation rate and then follow the manufacturer's instructions to determine the design's susceptibility to hypoxia upon initial donning.

The performance testing will evaluate CCER units using the breathing and metabolic simulator. Of these, three units will be tested in new condition, and two will receive environmental treatments prior to performance testing. The testing regimen will employ the following oxygen use-rate cycle: 3.0 liters per minute for 5 minutes, 2.0 liters per minute for 15 minutes, and 0.5 liters per minute for 10 minutes. Other parameters of the testing are specified in Table 3 below.

TABLE 3—PERFORMANCE TEST REQUIREMENTS

Work-rate test sequence	Duration per cycle (in minutes)	VO_2 (L/min)	VCO_2 (L/min)	Ve (L/min)	RF (breaths/min)
1. Peak	5	3.00	3.20	65.0	25
2. High	15	2.00	1.80	44.0	20
3. Low	10	0.50	0.40	20.0	12

VO_2 = volume of oxygen consumed per minute; VCO_2 = volume of carbon dioxide produced per minute.
Ve = ventilation rate in liters of air per minute; RF = respiratory frequency.

The 3.0 liters per minute oxygen use-rate represents peak exertion. The 2.0 liters per minute oxygen use-rate is high, representing substantial exertion. The 0.5 liters per minute oxygen use-rate is very low, representing a sedentary person, such as a worker who might be trapped and awaiting rescue.[43]

[42] 30 U.S.C. 811(a)(9).

[43] Turner N, Beeckman D, Hodous T. Evaluation of proposed methods to update human testing of self-contained breathing apparatus. *AIHAJ*. Dec. 1995;56:1195–1200.

Louhevaara V, Tuomi T, Smolander J, *et al.* Cardiorespiratory strain in jobs that require respiratory protection. *Int. Arch. Occup. Environ. Health*. 1985;55:195–206.

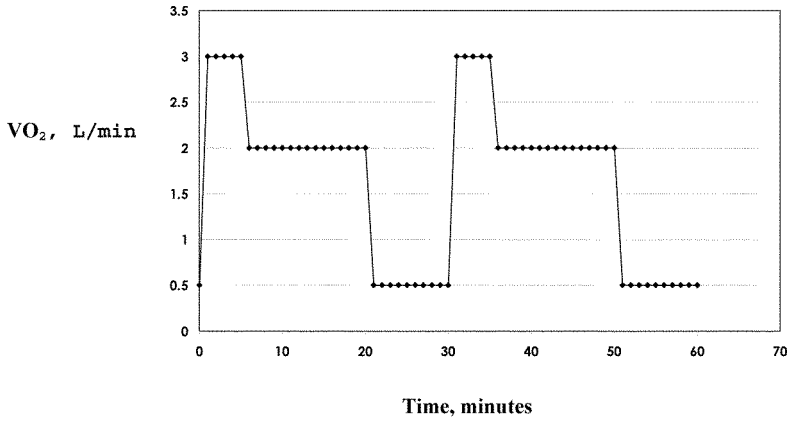
Lemon PW, Hermiston RT. The human energy cost of fire fighting. *J. Occup. Med.* Aug. 1977;19:558–562.

The test will be started by the exhalation of two large breaths into the unit before donning it. This will determine the susceptibility of the CCER to hypoxia.

Since the testing cycle requires 50 liters of oxygen, CCERs that have less than a 50 liter capacity will exhaust their capacity prior to completing a full cycle as specified. To accommodate this limitation, if a unit contains less than 50 liters of useable oxygen (as determined by the capacity test under § 84.304), NIOSH will require the submission of additional units so that the test can be completed through the testing of a sequence of two or three units, as necessary. Such a requirement ensures that the CCER is tested at each work rate in its entirety. CCERs with greater than a 50 liter capacity will repeat the cycle until the oxygen supply is exhausted, as indicated in the graph below.

One unit will be tested by a human subject on a treadmill. The purpose of the human subject test is to provide assurance that the respirator will perform effectively when responding to the more variable loading produced by a human subject.

Performance Test



7. Section 84.306 Wearability Test Requirements

This section specifies the testing regimen that will be used to ensure that the CCER can be easily and quickly donned. The testing procedures also ensure that during any reasonably anticipated activity, the CCER will not physically harm or significantly hinder the user and would provide an adequate and uninterrupted supply of breathing gas. Testing will be conducted using three human subjects of differing heights and weights,[44] as specified, to provide reasonable assurance that the results would be representative of most potential CCER users.

Subsection (b) requires that trained users be able to successfully don the CCER, initiating breathing through the device within 30 seconds. This criterion, derived from current training requirements for the use of CCERs used in mining,[45] is reasonably protective in the case of emergency scenarios involving an explosion or sudden detection of a hazardous breathing environment. This subsection allows NIOSH to determine whether any particular design, construction, or material characteristic of the CCER could hinder the user in the correct and timely donning of the CCER. These determinations may be made based on either the demonstrated ability of a human subject to don the CCER as required or the identification of plausible circumstances that would prevent the required timely donning.

Subsection (c) and the table below specify the activities that will be performed by the human subjects to test the CCER. These activities are derived from the present regulations and represent the types of activities and physical orientations that may occur during escapes. The test will continuously monitor the CCER to ensure these activities and orientations do not adversely affect the adequacy of the CCER's supply of breathing gas and to identify any potential for the CCER to harm or hinder the user during an escape.

TABLE 4—WEARABILITY TEST REQUIREMENTS

Activity	Minimum duration
Sitting	1 minute.
Stooped walking	1 minute.
Crawling	1 minute.

TABLE 4—WEARABILITY TEST REQUIREMENTS—Continued

Activity	Minimum duration
Lying on left side	1 minute.
Lying on right side	1 minute.
Lying on back	1 minute.
Bending over to touch toes.	1 minute.
Turning head from side to side.	1 minute (at least 10 times).
Nodding head up and down.	1 minute (at least 10 times).
Climbing steps or a laddermill.	1 minute (1 step/second).
Carrying 50-lb bag on treadmill at 5 kph.	1 minute.
Lifting 20-lb weight from floor to an upright position.	1 minute (at least 10 times).
Running on treadmill at 10 kph.	1 minute.

8. Section 84.307 Environmental Treatments

This section specifies the environmental treatments that will be administered to the CCER to ensure that it is reasonably durable and resistant to the potentially performance-degrading environmental factors of extreme storage temperatures, shock, and vibration.

The extreme storage temperature test specified in subsection (b) is based on worst-case scenarios. For example, the high temperature (71 °C) test is based on

[44] The size range is intended to be representative of respirator users. See: Zhuang Z and Bradtmiller B. Head-and-face anthropometric survey of U.S. respirator users. *J. Occup. Environ Hyg.* 2005;2:567–576.

[45] Vaught C, Brnich MJ, and Kellner HJ. *Instructional mode and its effect on initial self-contained self-rescuer donning attempts during training.* Pittsburgh, PA: U.S. Department of the Interior, Bureau of Mines; 1988. RI 9208.

the temperature associated with storage in the trunks of vehicles. In response to public comments, units will be allowed to return to room temperature between steps.

The shock test specified in subsection (c), which is a series of 1-meter drops onto a concrete surface, is based on the height at which the respirator would be handled and attached to the user's belt. In response to public comments, the provision specifies that the shock test will be conducted on units in the casing in which they are deployed for individual use.

The vibration test specified in subsection (d) is a composite test based on the vibration levels measured on the frames of underground longwall and continuous mining machines and on underground and surface haulage vehicles.[46]

9. Section 84.308 Additional Testing

This section specifies several other tests that NIOSH will conduct, as appropriate. Each unit tested must meet the conditions specified in the test to receive approval.

Under subsection (b), NIOSH will perform safety hazard tests on any CCER that stores more than 200 liters of oxygen or that stores compressed oxygen at pressures exceeding 3,000 psi. None of the current 1-hour CCER designs has such storage capacities. However, if such a design were submitted for approval, the applicant would have to provide an additional 15 units of the CCER for these additional tests. The specifications for the tests are provided in a series of Bureau of Mines reports referenced in the regulatory text.

Under subsection (c), NIOSH will perform a series of tests on one or more units of every CCER submitted for approval to evaluate the effectiveness of the required eye protection (goggles or an escape hood lens) against dust, gas, and fogging that could impair the user's vision, as well as for durability. The tests proposed for dust and gas and durability were established by the International Organization for Standardization (ISO), a globally recognized consensus standard setting organization.[47] The test for fogging was established by the European Committee for Standardization, a consensus standard-setting organization within the European Union.[48] These specified tests, which are widely accepted by the safety and manufacturing communities, are incorporated by reference into this rule.

10. Section 84.309 Additional Testing and Requirements for Dockable CCERs

This section will provide for NIOSH to test and approve dockable CCERs, which are CCERs that would allow the user to resupply the breathing gas source included in the CCER through the attachment (docking) of breathing gas resupply sources that would be cached at locations along escape routes. Such dockable CCERs do not presently exist in the U.S. respirator market, but substantial interest in such technology has been expressed in the mining community, most recently in response to the Sago Mine disaster in 2006.[49]

Paragraph (a) specifies that NIOSH will conduct testing to ensure that the CCER user will be able to perform the docking process safely, reliably, and quickly under escape conditions. Precise testing protocols are not specified because they will depend on the technology, which has yet to be developed; test protocols will be posted on the NIOSH Web site once they are created. However, the provisions clearly specify the qualitative performance characteristics required for approval.

Paragraph (b) provides that NIOSH will designate CCERs that meet the testing requirements of this section as ''Dockable.''

Paragraph (c) provides that NIOSH will assign the capacity rating to the dockable CCER using only the breathing gas supply included for the initial use of the wearable apparatus. In other words, the capacity of the breathing gas resupply units will not be taken into account in rating the capacity of the CCER.

Paragraph (d) provides that NIOSH test the breathing gas resupply units produced for the dockable unit and specify their capacities using capacity testing procedures consistent with those applied to testing the dockable CCER. This testing is necessary so that users have NIOSH verification of the capacity of the resupply units. The provision also provides for appropriate labeling to specify the capacity of the resupply unit and its compatibility with the CCER.

Paragraph (e) provides that NIOSH will be able to require the applicant to provide additional units of the CCER for the additional testing associated with dockable units. NIOSH cannot determine at this time whether additional units will be needed.

Paragraph (f) provides that NIOSH will not approve a CCER with docking components, even without the NIOSH ''Dockable'' designation, unless it satisfies the testing and other requirements proposed for approving dockable units. This provision is intended to avoid the plausible circumstance of users mistaking certified CCERs with docking components as having been approved by NIOSH as dockable.

11. Section 84.310 Post-Approval Testing

This section provides for NIOSH to conduct periodic testing of deployed units of approved CCERs. The purpose of such post-approval testing is to evaluate the capacity and performance of the approved CCER after it has been subject to actual field conditions including operations, storage, and handling at worksites. NIOSH will obtain such units from employers in exchange for new units, substituted at no cost to the employer. NIOSH will require, as a condition of continued approval, that the applicant make available for purchase by NIOSH a sufficient number of new units (not to exceed 100 units annually) to support the post-approval testing program. On several occasions, NIOSH has been hampered by the lack of an available supply of a CCER model, either because the manufacturer produces the products intermittently or has ceased production permanently. In response to public comments, the rule allows manufacturers that discontinue a particular line of respirators selected for field evaluation to replace those units with similar, NIOSH-approved CCERs.

If testing indicates that deployed units of a CCER are not consistently meeting the capacity and performance standards under which the CCER was approved, NIOSH will request remedial actions by the applicant. NIOSH will be authorized to revoke the approval of a CCER if the applicant does not remediate the cause(s) of the problem(s). In such a case, NIOSH will work with the relevant regulatory agencies and industry and

[46] Dayton T. Brown, Inc. *Environmental test criteria for the acceptability of mine instrumentation.* Phase 1, Final Report DTB2GR80–0643. U.S. Bureau of Mines contract No. J0100040; June 1980;72.

[47] ISO 4855:1981, *Personal eye-protectors—Non-optical test methods.* International Organization for Standardization. Clauses 13, 14; Sub-Clause 3.1. Copies are available for inspection at NIOSH (see rule text for details) and for purchase from the ISO Web site at: *http://www.iso.org/iso/catalogue_detail.htm?csnumber=10838.* Accessed October 7, 2010.

[48] European Standard BS EN 168:2002, *Personal eye-protection, Non-optical test methods.* European Committee for Standardization. January 2002. Copies are available for inspection at NIOSH (see rule text for details) and for purchase from the BSI British Standards Web site at: *http://shop.bsigroup.com/en/ProductDetail/?pid=000000000030036280.* Accessed October 7, 2010.

[49] McAteer JD, *et al. The Sago Mine disaster: a preliminary report to Governor Joe Manchin III.* Buckhannon, West Virginia; July 2006;14. *http://www.wvgov.org/SagoMineDisasterJuly2006FINAL.pdf.* Accessed October 7, 2010.

labor organizations to notify users of the revocation.

A program of post-approval testing is important for assuring users of the effectiveness of their equipment. Simulations of environmental conditions conducted in a laboratory during the approval process cannot perfectly and comprehensively replicate all conditions that might be associated with the actual storage and wearing of CCERs in mines and other work environments. The post-approval testing also serves to identify potential problems of quality control in the manufacturing process. The regulatory requirements of this section ensure the feasibility of a post-approval testing program and establish specific authorities and obligations in connection with the results of such testing.

12. Section 84.311 Registration of CCER Units Upon Purchase

This section requires that manufacturers provide each purchaser of a CCER unit with copies of procedures for registering purchased units with NIOSH. NIOSH will also work with relevant agencies and industry and labor associations to publicize the registration program. It is particularly important to reach purchasers and users of CCERs who obtain their devices from secondary markets and through equipment transfers from other work sites. This registration will enable NIOSH to notify purchasers when: (1) A problem associated with a model of CCER is identified; (2) such a problem requires a remedial action; or (3) NIOSH revokes the certification of a CCER. Presently, NIOSH has limited ability to locate users of particular CCER models. Manufacturers do not consistently retain records of purchasers and may sell product through distributors. Also, there is a secondary market for re-selling purchased CCERs as purchasers go out of business, reduce their employment, or select an alternate CCER model.

B. Subpart G—General Construction and Performance Requirements

1. Sections 84.60, 84.63–84.65

These sections of Subpart G, which provide general construction and performance requirements for respirators approved under 42 CFR Part 84, are presently limited to covering respirator types specified under Subparts H through L. Since this rule removes CCER provisions from under Subpart H and places them under a newly created Subpart O, Subpart G is revised to cover Subpart O as well as Subparts H through L. Furthermore, by technical error, existing Subparts N and KK have been inadvertently omitted from coverage under Subpart G, even though this provision was intended to apply to all respirators types. In this final rule, HHS extends the coverage of Subpart G to all respirators certified under this Part (i.e., Subparts H through KK) to clearly specify the comprehensive coverage of Subpart G to all respirator types presently approved. This change also provides coverage under Subpart G for respirator types that might be distinguished under newly created sections in the future.

C. Subpart H—Self-Contained Breathing Apparatus

1. Section 84.70 Self-Contained Breathing Apparatus; Description

This section excludes CCERs from coverage under any provisions of Subpart H, except as provided for under § 84.304(a)(5). The provisions of Subpart H concerning respirators used for escape only from hazardous environments apply solely to those with an open-circuit design.

IV. Regulatory Assessment Requirements

A. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is being treated as a ''significant regulatory action'' within the meaning of E.O. 12866 because it raises novel legal or policy issues. Current MSHA regulations (30 CFR 75.1714–1) require that underground coal mine operators provide miners with CCERs (referred to in the mining community as a self-contained self-rescuer or SCSR) which have been approved by MSHA and NIOSH under 42 CFR Part 84, as follows:

(a) 1-hour SCSR;

(b) A SCSR of not less than 10 minutes and a 1-hour canister; or

(c) Any other self-contained breathing apparatus which provides protection for a period of 1 hour or longer and which is approved for use by MSHA as a self-rescue device when used and maintained as prescribed by MSHA.

By changing the nomenclature used to identify different size CCER models, the new rule will change the criteria by which NIOSH and MSHA approve CCERs intended for use in mines. MSHA, as a co-approver, will determine whether they meet the requirements of paragraphs (a) and (b) of the MSHA regulation, consistent with the NIOSH approval process. As discussed above in Section I.C. of the preamble, there is evidence that the duration rating system causes the user to believe that the apparatus will last for a specific length of time, regardless of the user's weight, physical condition, or activity. This is not an accurate interpretation. Relying on a 1-hour unit to supply 1 hour of oxygen to all users under all circumstances can lead to inappropriate deployment and misuse in emergencies. NIOSH believes that transition to the capacity rating will alleviate these misinterpretations.

The rule is not considered economically significant, as defined in sec. 3(f)(1) of E.O. 12866. HHS anticipates that respirator manufacturers will need to modify some existing CCER designs and make related changes to their manufacturing processes to meet the new capacity and performance testing requirements. However, these changes are not expected to require manufacturers to use fundamentally different or substantially more costly technology. Similarly, NIOSH does not expect the new requirements for indicators of excessive thermal exposure, moisture damage, or chemical bed integrity to have a substantial impact on the manufacturing cost of CCERs. Such indicators have already been incorporated into CCER designs by some manufacturers without substantially increasing product prices. Hence, NIOSH does not expect that manufacturers will have to engage in new manufacturing processes that would substantially increase manufacturing costs or product prices.

Moreover, even a substantial cost increase in CCERs would not be economically significant. The scope of the market for CCERs is presently very limited. According to MSHA, there are approximately 47,000 coal miners, the principal users of CCERS in the private sector, working underground in such positions as mining machine operators, excavating machine operators, roof bolters, earth drillers, electricians, helpers, and first line supervisors.[50] The

[50] U.S. Department of Labor, Mine Safety and Health Administration. Mining Industry Accident,

Continued

service lives of current CCER models range from 10 to 15 years, although some units may be damaged or used for an escape or escape simulation and consequently would be taken out of service sooner. Assuming conservatively that each CCER unit is replaced every 10 years on average and given that approximately 180,000 units [51] are currently deployed, the mining industry would purchase an average of 18,000 units annually. Given an average cost of $675 per unit,[52] these data suggest that this principal component of the current CCER market represents approximately $12.2 million in annual sales. Other major components of the CCER market include sales to the Navy and Coast Guard and possibly the maritime industry. Among these, the Navy is the largest consumer, with over 400,000 units in current use; assuming conservatively that each of the Navy's CCER units is replaced every 10 years, the Navy purchases an estimated 40,000 units annually; therefore, the annual CCER market for the Navy represents approximately $27 million.[53] In sum, the CCER market is estimated to be approximately $39.2 million per year. Although HHS does not expect the cost of individual CCER units to rise significantly in response to the new testing and approval standards, a hypothetical increase of 50 percent in the price per unit would result in an average annual market of $58.8 million. The estimated impact of the final rule on respirator sales (the difference between estimated current annual sales and estimated annual sales under the new standards calculated using a 50 percent per unit increase) is $19.6 million per year, or less than 20 percent of the $100 million threshold for a significant regulatory action having an annual effect on the economy. Further, the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. No respirator manufacturer or underground coal mine operator offered comment on this analysis.

The new requirements will likely produce economic benefits. First, they will provide more product performance information to purchasers, which will result in a more efficient market. Respirators will be tested for their specific capacity, in addition to being rated by general categories of capacity. As discussed under Section III—84.304 of the preamble, this specificity will allow purchasers to match respirators more closely to their particular needs. As a result, manufacturers will have incentive to innovate and address the diverse needs of users. Further, having specific NIOSH-approved capacity levels will provide manufacturers with more incentive to differentiate the performance of their products from those of their competitors. This competition should result in a market of products that more closely meet the design and performance needs of different work sites, thereby improving the protection of miners and other workers who rely on CCERs in emergencies. While NIOSH is unable to quantify the benefits of a more efficient market, it is reasonable to assume that the development of products more specifically tailored to the needs of purchasers will eliminate wasteful spending by employers and improve worker protection.

Second, the new requirements for safety features (which provide for the detection of units that have undergone excessive environmental stresses or mishandling) have the potential to increase the ability of purchasers, users, inspectors, and others to contribute to assuring the reliability of deployed CCER units. This should make operator safety programs and regulatory compliance investments by the government more efficient by making it less likely that bad product will make its way to a worker's hands. While HHS cannot quantify this benefit, it is logical and reasonable to expect that a positive economic impact will derive from improved safety features.

Third, the new requirements for safety features and for capacity and performance testing are designed to better protect workers relying on CCERs for their survival. Although NIOSH lacks information on the number of workers annually who rely on a CCER for their survival and the quantifiable benefit they will derive from the improvements in this rule, the improved standards are likely to result in fewer negative outcomes and lower associated costs. In addition, substantial costs associated with rescue operations could be averted if workers escape independently.

The rule will not interfere with State, local, or tribal governments in the exercise of their governmental functions.

OMB has reviewed this proposed rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. The Department of Health and Human Services (HHS) certifies that this rule will not have a significant economic impact on a substantial number of small entities, including both small manufacturers of CCERs and the small mining operators that are required to purchase them, within the meaning of the RFA.

CCERs currently sold in the United States are manufactured by only two U.S. companies: CSE Corporation of Monroeville, Pennsylvania, and Ocenco Incorporated of Pleasant Prairie, Wisconsin. (A third company, Draeger, is based in Germany.) These manufacturing companies are small businesses as defined under the Small Business Act for this industry sector (NAICS 339113—Surgical Appliance and Supplies Manufacturing), employing fewer than 500 employees. Accordingly, HHS has given consideration to the potential impact of this rule on these two companies.

HHS did not receive any comments on the economic analysis published in the **Federal Register** (73 FR 75027, December 10, 2008).

Manufacturers will likely have to design new products and make related changes to their manufacturing processes for these products. However, in NIOSH's judgment, such new designs and production changes would not require substantial technological innovation in order to meet the improved performance standards. Similarly, NIOSH does not expect the new requirements for indicators of excessive thermal exposure, moisture damage, or chemical bed integrity to have a substantial impact on the manufacturing cost of CCERs. Such indicators have already been incorporated into CCER designs by some manufacturers without substantially increasing product prices. Most importantly, any associated costs incurred by the manufacturers for compliance with this rule could be

Injuries, Employment, and Production Data—Address & Employment Self-Extracting Files. *http://www.msha.gov/stats/part50/p50y2k/aetable.htm.* Accessed July 7, 2011.

[51] This figure was supplied by MSHA, which maintains a registry of all CCER units deployed to U.S. coal mines.

[52] NIOSH calculated this average price based on the products supplied by the three CCER manufacturers that supply U.S. coal mines, unit prices to NIOSH for its recent purchases of these products, and the approximate deployment distribution of these products among U.S. coal mines as indicated by the MSHA CCER registry for coal mines.

[53] Estimated from information provided by the Naval Surface Warfare Center, Panama City, Florida, December 20, 2004.

passed on to consumers entirely since the demand for these products is essentially inelastic.[54] HHS is unable to quantify the impact on the two small manufacturers; however, the Department believes that manufacturers did not offer comment on this analysis because the cost of compliance is not expected by any stakeholder to exceed the benefits derived from this final rule. Accordingly, HHS finds there would not be a significant economic impact on the two U.S. respirator manufacturers which produce the CCERs covered by this rule. The table below identifies the two domestic CCER manufacturers and the non-U.S. company, the products each make that are used in underground coal mining, the cost to NIOSH of purchasing an individual unit, and the market share of each type of respirator.[55]

CLOSED-CIRCUIT ESCAPE RESPIRATOR MANUFACTURERS AND COSTS

Manufacturer	Respirator	Cost	Market share (percent)
CSE	SR–100	$689	46
Ocenco	EBA 6.5	670	39
Ocenco	M–20	412	2
Draeger	OKY–X Plus	537	5
MSA *	Life-Saver 60		

* MSA supplied CCERs to 7% of the market in 2002; they have since stopped U.S. sales.

Further, because the Mine Act (30 U.S.C. 842(h)) and MSHA regulations (30 CFR 75.1714–1) require coal mine operators to supply CCERs approved by NIOSH and MSHA for the protection of coal miners working in underground coal mines, HHS has also considered the secondary or ''downstream'' economic impact of this rule on coal mine operators that would be considered small businesses, which the Small Business Administration defines as those mines employing fewer than 500 employees. CCERs are purchased by bituminous coal mining companies (NAICS 212112) and anthracite coal mining companies (NAICS 212113). According to MSHA, 488 underground coal mines can currently be considered small.[56] According to the 2007 Economic Census, the value of coal shipments made in these two industries is approximately $15.5 billion annually;[57] because nearly all bituminous and anthracite coal mining companies are considered small, it is reasonable to assume that this value approximates revenues for those small manufacturers.

NIOSH does not expect that the prices of CCERs will be substantially affected by the new approval testing requirements. Respirator manufacturers may need to modify existing CCER designs to meet the new capacity or performance testing requirements. However, these requirements should not cause the manufacturers to use fundamentally different or substantially more costly technology, as discussed above. Hence, NIOSH does not expect that manufacturers would have to engage in markedly different manufacturing processes that might substantially increase product prices. The manufacturers would incur one-time costs for redesign of products or product components and associated production operations, as well as one-time costs for obtaining certification testing and approval from NIOSH and MSHA. Attempting to calculate price increases that would cover such costs would require more data than are available to NIOSH. Instead, HHS has evaluated the relative magnitude of possible costs under the extremely conservative assumption that CCER prices would be increased permanently by 50 percent to amortize the one-time product and production redesign and NIOSH approval application costs. Currently, the weighted average price of a CCER is $675[58] and MSHA's CCER registry indicates there are approximately 180,000 CCERs deployed in underground coal mines. There were approximately 47,000 coal miners working underground in large and small U.S. coal mines in the first quarter of 2011.[59] Assuming very conservatively that each unit requires replacement every 5 years,[60] assuming that all CCERs deployed in mines would be replaced in the first year of this final rule, and assuming that the prices of all CCERs were to increase by 50 percent as a result of this rule, the annualized additional costs would amount to between approximately $282 and $315 per underground coal miner.[61] This increase in labor-associated costs would not be significant in the context of the total per capita labor costs of underground coal mine operators. The total earnings of non-union coal miners (wages and benefits), which generally represents employment for small coal mine operators, is approximately

[54] The MINER Act requires underground coal mine operators to supply each underground worker with at least 4 hours of breathable air; the International Convention for the Safety of Life at Sea similarly requires ships to carry breathable air in designated locations.

[55] Kyriazi N, Shubilla JP. *Self-contained self-rescuer field evaluation: seventh-phase results.* Pittsburgh, PA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health; March 2002. DHHS (NIOSH) Publication No. 2002–127, RI 9656.

[56] U.S. Department of Labor, Mine Safety and Health Administration. Mining Industry Accident, Injuries, Employment, and Production Data—Address & Employment Self-Extracting Files. *http://www.msha.gov/stats/part50/p50y2k/aetable.htm.* Accessed July 7, 2011.

[57] U.S. Census Bureau. 2007 Economic Census. *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0721I1&-_lang=en.* Accessed August 24, 2011.

[58] NIOSH calculated this weighted average price using the products of the three CCER manufacturers that supply U.S. coal mines, unit prices to NIOSH for its recent purchases of these products, and the approximate deployment distribution of these products among U.S. coal mines as indicated by the MSHA CCER registry for coal mines. The use of this weighted average price simplifies the analysis and is adequate considering the equivalency of these prices for the major share holders (Ocenco and CSE) as indicated in Table 1.

[59] U.S. Department of Labor, Mine Safety and Health Administration. Mining Industry Accident, Injuries, Employment, and Production Data—Address & Employment Self-Extracting Files. *http://www.msha.gov/stats/part50/p50y2k/aetable.htm.* Accessed July 7, 2011.

[60] This replacement rate is an exceptionally conservative estimate. A more realistic estimate is 10 percent annually (i.e., the replacement of a CCER unit every 10 years), based on the known service-life of CCERS of 10–15 years, the MSHA CCER registry, and NIOSH long-term field evaluation data. These latter two sources indicate the current replacement rate is well under 10 percent.

[61] The lower value was obtained using a cost of capital rate of 3 percent: $675/unit × 0.5 cost increase × 180,000 units × 0.2184 annualization factor/47,000 underground miners = annual costs per underground miner. The higher value was obtained using a cost of capital rate of 7 percent: $675/unit × 0.5 cost increase × 180,000 units × 0.2439 annualization factor/47,000 underground miners = annual costs per underground miner.

$72,000.[62] HHS finds that an average of $282 to $315 in additional annual costs per coal miner (less than 0.39 to 0.44 percent of per capita labor costs), or $13.3 to $14.8 million in estimated annual costs to the 488 small underground coal mines were this rule to increase CCER prices by 50 percent, does not represent a significant economic impact on small mine operators (.09 to .1 percent of annual revenue); nor would a 100 percent increase in CCER prices, which HHS does not find to be plausible considering the facts discussed here, impose a significant economic impact on small mine operators.[63]

HHS consulted with and received approval from the Small Business Administration on this analysis of the final rule's impact on small entities.

For the reasons provided, a regulatory flexibility analysis, as provided for under RFA, is not required.

C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a Federal agency shall not conduct or sponsor a collection of information from 10 or more persons other than Federal employees unless the agency has submitted a Standard Form 83, Clearance Request, and Notice of Action, to the Director of the Office of Management and Budget (OMB), and the Director has approved the proposed collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

HHS has determined that this final rule contains information collections that are subject to review by OMB. OMB has approved NIOSH's collection of information from applicants under OMB Control No. 0920–109, ''Respiratory Protective Devices,'' which covers all information collected under 42 CFR Part 84. Current OMB approval for this data collection expires August 31, 2014. The requirements of this final rule will not pose an additional burden on applicants because the application will not change from current practices.

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS must report to Congress the promulgation of a final rule, once it is developed, prior to its taking effect. The report will state that HHS has concluded that the rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. NIOSH has provided clear testing and certification requirements it will apply uniformly to all applications from manufacturers of CCERs. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

HHS has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule will have no effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution, or use because it applies to the underground mining sector. The rule would not result in any costs to mines. Hence this rule does not constitute a ''significant energy action.'' Accordingly, E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further Agency action or analysis.

J. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the proposed rule consistent with the Federal Plain Writing Act guidelines.

V. Final Rule

List of Subjects in 42 CFR Part 84

Incorporation by reference, Mine safety and health, Occupational safety and health, Personal protective equipment, Respirators.

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR Part 84 as follows:

PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

■ 1. The authority citation for Part 84 continues to read as follows:

Authority: 29 U.S.C. 651 *et seq.,* and 657(g); 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

Subpart G—General Construction and Performance Requirements

§ 84.60 [Amended]

■ 2. Amend § 84.60(a) to remove the phrase ''in subparts H through L'' and add in its place the phrase ''in subparts H through KK.''

§ 84.63 [Amended]

■ 3. Amend § 84.63(a), (b), and (c) to remove the phrase ''in subparts H through L'' and add in its place the phrase ''in subparts H through KK.''

[62] According to the National Mining Association, coal miners have average annual earnings of $72,200. See National Mining Association. *Profile of the U.S. coal miner 2008.* August 2009. *http://www.nma.org/pdf/c_profile.pdf.* Accessed October 23, 2009. This figure is consistent with the pay rate reported for non-union underground coal miners at $35.56 per hour. See InfoMine USA, Inc. *U.S. coal mines salaries, wages, and benefits, 2009.* February 2010. This non-union pay rate applied to a 2,000 hour work year represents total wages and benefits paid by small coal mine operators.

[63] HHS guidance defines ''significant economic impact'' as a 3–5 percent or more average annual impact on the total costs or revenues of small entities. See: U.S. Department of Health and Human Services. *Guidance on proper consideration of small entities in rulemakings of the U.S. Department of Health and Human Services.* May 2003.

§ 84.64 [Amended]

■ 4. Amend § 84.64(b) to remove the phrase ''of subparts H through L'' and add in its place the phrase ''of subparts H through KK.''

§ 84.65 [Amended]

■ 5. Amend § 84.65(a) to remove the phrase ''to subparts H through L'' and add in its place the phrase ''to Subparts H through KK.''

Subpart H—Self-Contained Breathing Apparatus

■ 6. Amend § 84.70 to:
■ a. Redesignate paragraphs (a) through (d) as (b) through (e), respectively; and
■ b. Add a new paragraph (a) to read as follows:

§ 84.70 Self-contained breathing apparatus; description.

(a) *Limitation on scope.* None of the provisions of Subpart H apply to closed-circuit escape respirators to be approved specifically for escape only from hazardous atmospheres, except as provided for under § 84.304(a)(5). Such respirators are covered under the provisions of subpart O of this part.

* * * * *

■ 7. Add subpart O to part 84 to read as follows:

Subpart O—Closed-Circuit Escape Respirators

Sec.
84.300 Closed-circuit escape respirator; description.
84.301 Applicability to new and previously approved CCERs.
84.302 Required components, attributes, and instructions.
84.303 General testing conditions and requirements.
84.304 Capacity test requirements.
84.305 Performance test requirements.
84.306 Wearability test requirements.
84.307 Environmental treatments.
84.308 Additional testing.
84.309 Additional testing and requirements for dockable CCERs.
84.310 Post-approval testing.
84.311 Registration of CCER units upon purchase.

Subpart O—Closed-Circuit Escape Respirators

§ 84.300 Closed-circuit escape respirator; description.

The closed-circuit escape respirator (CCER), technically a subset of self-contained breathing apparatus (SCBAs) which are otherwise covered under subpart H of this part, is used in certain industrial and other work settings in emergencies to enable users to escape from atmospheres that can be immediately dangerous to life and health. Known in the mining community as self-contained self-rescuers (SCSRs), and in other industries as emergency escape breathing devices (EEBDs) or apparatus (EEBAs), CCERs are relied upon primarily by underground coal miners, sailors in federal service, and railroad workers to escape dangerous atmospheres after a fire, explosion, or chemical release. CCERs are commonly worn on workers' belts or stored in close proximity to be accessible in an emergency. They are relatively small respirators, typically the size of a water canteen, that employ either compressed oxygen with a chemical system for removing exhaled carbon dioxide from the breathing circuit, or a chemical that both provides a source of oxygen and removes exhaled carbon dioxide. Users re-breathe their exhalations after the oxygen and carbon dioxide levels have been restored to suitable levels, which distinguishes these ''closed-circuit'' self-contained respirators from ''open-circuit'' self-contained respirators, which vent each exhalation.

§ 84.301 Applicability to new and previously approved CCERs.

This subpart applies to the following CCERs:

(a) All CCERs submitted to NIOSH for a certificate of approval after April 9, 2012; and

(b) All CCERs manufactured and labeled NIOSH-approved and sold by manufacturers after April 9, 2015.

§ 84.302 Required components, attributes, and instructions.

(a) Each CCER must include components and/or attributes appropriate to its design, as follows:

(1) Eye protection: Each CCER must include safety goggles or an escape hood lens that protects against impact, fogging, and permeation by gas, vapor, and smoke, as specified under § 84.308(c);

(2) Thermal exposure indicators: If the manufacturer specifies a maximum and/or minimum environmental temperature limit for storage of the CCER, then the CCER must include a component, an attribute, or other means by which a person can determine whether the CCER has been exposed to temperatures that exceed the limit(s);

(3) Chemical bed physical integrity indicators: If the CCER includes a chemical oxygen storage or chemical carbon dioxide scrubber that can be functionally damaged by impact, vibration, or any other environmental factor to which the CCER might be exposed, then the CCER must include a component, an attribute, or other means by which a person can detect any damage or alteration of the chemical oxygen storage or chemical carbon dioxide scrubber that could diminish the NIOSH-certified performance of the CCER, as tested under this subpart;

(4) Oxygen storage vessel: If the CCER includes an oxygen storage vessel, the vessel must be approved by the U.S. Department of Transportation (DOT) under 49 CFR part 107, ''Hazardous Materials Program Procedures,'' unless exempted under subpart B of 49 CFR part 107;

(5) Tamper-resistant/tamper-evident casing: If the CCER is not designed for its casing to be opened prior to use for an actual escape (e.g., for maintenance, escape drills, or inspection of the components), the casing must include a component, an attribute, or other means to prevent a person from accidentally opening the casing and, upon such opening, to either prevent the casing from being closed or to clearly indicate to a potential user that the casing has been previously opened; and

(6) Moisture damage indicators: If the CCER is not designed for its casing to be opened for inspection of its internal components, the casing must include a component, an attribute, or other means by which a person can detect any ingress of water or water vapor that could diminish the NIOSH-certified performance, as tested under this subpart.

(7) Oxygen starter indicators: If the oxygen starter is a critical component of the CCER design, then the CCER must include a component, an attribute, or other means by which a person can detect observable damage, premature activation, or recognized potential defect of the starter.

(b) Where an indicator is required, the indication of the occurrence of the monitored condition must be clear and unambiguous: It must not depend on a subjective interpretation of subtle, graduated, or other non-discrete changes to the indicator.

(c) Where an indicator is required, the manufacturer shall provide NIOSH with an explanation of its function and operation, and shall provide relevant data and equipment to allow NIOSH to conduct a thorough evaluation of its accuracy and reliability.

(d) The components of each CCER must meet the general construction requirements specified in § 84.61.

(e) The CCER must be resistant to the permeation of the breathing circuit by gasoline vapors. To verify such resistance, NIOSH will test one unit by applying the gasoline vapor permeation test specified on the NIOSH Web site at *http://www.cdc.gov/niosh/npptl,* using a

breathing machine applying a ventilation rate of 40 liters per minute, performing the test for the longest duration achieved by any of the units that underwent the capacity testing specified under § 84.304.

(f) Exposed parts of the CCER must not be composed of metals or other materials that could, upon impact, create frictional sparks or that could store or generate static electrical charges of sufficient energy to ignite flammable gaseous mixtures.

(g) The design, construction, or materials of the CCER must not constitute a hazard to the user as a result of the wearing, inspection, or use of the CCER.

(h) CCER instructions and a service life plan must be provided to purchasers. This document must be clearly written.

(1) Instructions must address the following topics and elements:

(i) An explanation of how the CCER works;

(ii) A schematic diagram of the CCER;

(iii) Procedures for donning and use;

(iv) Procedures for inspecting the operating condition of the CCER;

(v) Procedures and conditions for storage, including but not limited to any recommended minimum and maximum temperatures for storage;

(vi) Limitations on use, including but not limited to any recommended minimum and maximum temperatures for use;

(vii) Procedures for disposal; and

(viii) Procedures for registration of the unit with NIOSH, pursuant to § 84.311.

(2) The service life must be addressed covering at least the following topics:

(i) The maximum number of years, from the date of manufacture, that the unit may remain available for use; this limit is intended to prevent the continued use of a unit that the applicant cannot assure would continue to perform as approved by NIOSH, due to reasonably foreseeable degradation of materials used in its construction;

(ii) Any other conditions, other than that specified under paragraph (h)(2)(i) of this section, that should govern the removal from service of the CCER (including an indication given by the activation or operation of any required indicator showing the monitored condition has occurred); and

(iii) Any procedures by which a user or others should inspect the CCER, perform any maintenance possible and necessary, and determine when the CCER should be removed from service.

(i) Each individual CCER unit approval label shall identify the capacity rating and number of liters of oxygen as determined by the capacity testing, pursuant to § 84.304.

§ 84.303 General testing conditions and requirements.

(a) NIOSH will conduct capacity and performance tests on the CCER using a breathing and metabolic simulator to provide quantitative evaluations and human subjects on a treadmill to provide qualitative evaluations. Information on the design and operation of the simulator is available from the NIOSH Web site at *http://www.cdc.gov/niosh/npptl.* Technical specifications can be obtained from NIOSH by contacting the National Personal Protective Technology Laboratory (NPPTL) by mail: P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236. Telephone: 412–386–4000 (this is not a toll-free number). Email: *npptl@cdc.gov.*

(b) Capacity, performance, and wearability tests will continuously monitor the stressors listed in Table 1. The stressors and their respective acceptable ranges will be measured at the interface between the CCER and the mouth by instruments capable of breath-by-breath measurement. Stressor measurements will be evaluated as 1-minute averages. The operating averages of each stressor will be calculated upon the completion of each test as the average of the 1-minute measurements of the stressor recorded during the test. The level of any excursion for a stressor occurring during a test will be defined by the 1-minute average value(s) of the excursion(s).

TABLE 1—MONITORED STRESSORS AND THEIR ACCEPTABLE RANGES

Stressor	Acceptable range operating average	Acceptable range excursion
Average inhaled CO_2	<1.5%	≤4%.
Average inhaled O_2	>19.5%	≥15%.
Peak Breathing Pressures	$\Delta P \leq 200$ mm H_2O	$-300 \leq \Delta P \leq 200$ mm H_2O.
Wet-bulb temperature[1]	<43°C	≤50°C.

[1] Wet-bulb temperature is a measurement of the temperature of a wet surface. It represents the temperature of the inhaled breathing gas in the CCER user's trachea.

(c) Capacity and performance tests will conclude when the stored breathing gas supply has been fully expended.

(d) NIOSH will determine a CCER to have failed a capacity, performance, or wearability test if any of the following occurs:

(1) A 1-minute average measurement of any stressor listed in Table 1 occurs outside the acceptable excursion range specified in Table 1; or an average stressor measurement calculated at the completion of a performance or capacity test exceeds the acceptable operating average range specified in Table 1; or

(2) A human subject cannot complete the test for any reason related to the CCER, as determined by NIOSH.

(e) Unless otherwise stated, tests required under this subpart will be conducted at the following ambient conditions:

(1) Ambient temperatures of 23 °C ± 3 °C; and

(2) Atmospheric pressures of 735 mm Hg ± 15 mm Hg.

§ 84.304 Capacity test requirements.

(a) NIOSH will conduct the capacity test on a total of 8 to 10 of the units submitted for approval, as follows:

(1) Three units will be tested on a breathing and metabolic simulator in the condition in which they are received from the applicant;

(2) Two units will be tested on a breathing and metabolic simulator after being subjected to the environmental treatments specified in § 84.307 of this subpart;

(3) Two units will be tested on a breathing and metabolic simulator at the cold-temperature limit recommended by the manufacturer under § 84.302(h)(1), after the unit has been stored for a minimum of 24 hours at this limit; and

(4) One unit, in the condition in which it is received from the applicant, will be tested by a human subject on a treadmill.

(5) To approve a CCER for use in coal mines, two units will also be tested by a human subject under the specifications of §§ 84.99 and 84.100 that are applicable to man test 4.

(b) The capacity test will begin upon the first inhalation from or exhalation into the unit.

(c) Each unit will be tested at a constant work rate, depending on the capacity value specified by the manufacturer, according to the requirements specified in Table 2. All volumes are given at standard temperature (0 °C) and pressure (760 mm Hg), dry, unless otherwise noted.

(d) NIOSH will rate an approved CCER using the appropriate capacity rating, as specified in Table 2.

TABLE 2—CAPACITY TEST REQUIREMENTS

Capacity rating	Capacity (L of O_2)	VO_2 (L/min)	VCO_2 (L/min)	Ve (L/min)	RF (Breaths/min)
Cap 1	$20 \leq L \leq 59$	2.50	2.50	55	22
Cap 2	$60 \leq L \leq 79$	2.00	1.80	44	20
Cap 3	$L \geq 80$	1.35	1.15	30	18

VO_2 = volume of oxygen consumed per minute; VCO_2 = volume of carbon dioxide produced per minute.
Ve = ventilation rate in liters of air per minute; RF = respiratory frequency.

(e) NIOSH will document the least value achieved by the seven units tested using the breathing and metabolic simulator. NIOSH will quantify this value of achieved capacity within an increment of 5 liters, rounding intermediate values to the nearest lower 5-liter increment.

§ 84.305 Performance test requirements.

(a) NIOSH will conduct the performance test on a total of six of the units submitted for approval, as follows:

(1) Three units will be tested on a breathing and metabolic simulator in the condition in which they were received from the applicant; and

(2) Two units will be tested on a breathing and metabolic simulator after being subjected to the environmental treatments specified in § 84.307; and

(3) One unit will be tested, in the condition in which it was received from the applicant, by a human subject on a treadmill.

(b) Except as provided under paragraph (c) of this section, the performance test will apply a repeating cycle of work rates, according to the sequence and requirements specified in Table 3, until the oxygen supply of the unit is exhausted.

(c) Testing of CCERs with less than 50 liters of capacity, as determined by the capacity testing under § 84.304, will require the submission of additional test units to fully apply the work-rate test sequence and requirements specified in Table 3. The testing of each individual unit will complete the cycle specified in Table 3 until the breathing supply of the initial test unit is exhausted. This initial test unit will then be replaced by a second unit, which will continue the test cycle, beginning at the work rate in the cycle at which the initial unit was exhausted, and completing the full period specified in Table 3 for that work rate before proceeding to the subsequent work rate, if any, specified in Table 3. Each initial testing unit will be replaced as many times as necessary to complete the cycle, not to exceed two replacement units per initial test unit.

(d) The performance test will begin with two exhalations into the unit at the specified ventilation rate and then follow the manufacturer's instructions to determine the design's susceptibility to hypoxia upon initial donning.

TABLE 3—PERFORMANCE TEST REQUIREMENTS

Work-rate test sequence	Duration per cycle (in minutes)	VO_2 (L/min)	VCO_2 (L/min)	Ve (L/min)	RF (breaths/min)
1. Peak	5	3.00	3.20	65.0	25
2. High	15	2.00	1.80	44.0	20
3. Low	10	0.50	0.40	20.0	12

VO_2 = volume of oxygen consumed per minute; VCO_2 = volume of carbon dioxide produced per minute.
Ve = ventilation rate in liters of air per minute; RF = respiratory frequency.

§ 84.306 Wearability test requirements.

(a) NIOSH will conduct the wearability test on a total of three of the units submitted for approval. Three human subjects (two males and one female), one subject per unit, will conduct the test. The three subjects will range in height and weight as follows: One subject of height ≥174 cm and weight ≥90 kg; one subject of either 163 cm ≤ height <174 cm, regardless of weight, or 72 kg ≥ weight <90 kg, regardless of height; and one subject of height <163 cm and weight <72 kg. All units tested must meet all conditions specified in this section to receive approval.

(b) NIOSH will evaluate the ease and speed with which users can don the CCER, as follows:

(1) Each test subject will be provided with manufacturer instructions, and must be able to don the CCER correctly, isolating the lungs within 30 seconds; [1] and

(2) A CCER must not include any design, construction, or material characteristic that can be anticipated or demonstrated, under plausible conditions, to hinder the user in the correct and timely donning of the CCER.

(c) NIOSH will continuously monitor CCER use by each test subject during the activities specified in Table 4 to evaluate the ability of the CCER to provide an adequate and uninterrupted breathing supply, including but not limited to the requirements of § 84.303(b), without harming or hindering a user. NIOSH will not approve a CCER if the use of any unit during these activities indicates any potential for the CCER to harm or hinder the user or to fail to provide an adequate and uninterrupted breathing supply to

[1] This time limit does not apply to any additional steps that might be required after the lungs are protected to adjust the unit for wear.

the user during reasonably anticipated conditions and activities of an escape.

TABLE 4—WEARABILITY TEST REQUIREMENTS

Activity	Minimum duration
Sitting	1 minute.
Stooped walking	1 minute.
Crawling	1 minute.
Lying on left side	1 minute.
Lying on right side	1 minute.
Lying on back	1 minute.
Bending over to touch toes	1 minute.
Turning head from side to side	1 minute (at least 10 times).
Nodding head up and down	1 minute (at least 10 times).
Climbing steps or a laddermill	1 minute (1 step/second).
Carrying 50-lb bag on treadmill at 5 kph	1 minute.
Lifting 20-lb weight from floor to an upright position	1 minute (at least 10 times).
Running on treadmill at 10 kph	1 minute.

§ 84.307 Environmental treatments.

(a) Four units submitted for approval will be tested for capacity and performance, pursuant to the requirements of §§ 84.303 through 84.305, after exposure to environmental treatments simulating extreme storage temperatures, shock, and vibration.

(b) The units will be stored for 16 hours at a temperature of −45 °C and for 48 hours at a temperature of 71 °C. Units will be returned to room temperature between high and low temperature treatments. The maximum rate of change for thermal loading shall not exceed 3 °C per minute and constant temperatures shall be maintained within ±2 °C.

(c) The units, in the casing in which they are deployed for individual use, will be subjected to physical shock according to the following procedure:

(1) The unit will be dropped six times from a height of 1 meter onto a concrete surface; and

(2) Each drop will test a different orientation of the unit, with two drops along each of its three major axes (top to bottom, left to right, and front to back).

(d) The units will be subjected to vibration according to the following procedure:

(1) The unit will be firmly secured to a shaker table, which will be vibrated with motion applied along a single axis for 180 minutes;

(2) The unit will be vibrated one axis at a time along each of three axes for a total of 9 hours; and

(3) The vibration frequency regimen applied to each axis will be cyclical, repeating the sequence and specifications provided in Table 5 every 20 minutes.

TABLE 5—VIBRATION TEST SEQUENCE

Sequence	Frequency (Hertz)	Acceleration g (± peak)
1	5–92	2.5
2	92–500	3.5
3	500–2000	1.5

§ 84.308 Additional testing.

(a) NIOSH will conduct additional tests, as indicated below, on one or more of the units submitted for approval. Each unit tested must meet the conditions specified in these tests for the CCER to receive approval.

(b) NIOSH will perform safety hazard tests on any CCER that stores more than 200 liters of oxygen or that stores compressed oxygen at pressures exceeding 3,000 psi. The applicant must submit 15 units in addition to the 21–23 units required for testing under §§ 84.304 through 84.307. These units will be evaluated for fire and explosion hazards using the tests specified in RI 9333, pages 4–18; RI 8890, pages 6–62; and PRC Report No. 4294, pages 18–62.

(c) NIOSH will perform the following tests on the eye protection (gas-tight goggles or escape hood lens) of one or more units of every CCER submitted for approval:

(1) NIOSH will test the effectiveness of the eye protection against dust using the method specified in ISO 4855–1981(E) Clause 13, Test for protection against dust. The result will be satisfactory if the reflectance after the test is equal to or greater than 80 percent of its value before testing.

(2) NIOSH will test the effectiveness of the eye protection against gas using the method specified in ISO 4855–1981(E), Clause 14, Test for protection against gas. The test must not result in staining of the area enclosed by the eye protection.

(3) NIOSH will test the durability of the eye protection using the method specified in International Standard ISO 4855–1981(E), Sub-clause 3.1, Unmounted oculars. The lens shall not crack or fracture as a result of the test.

(4) NIOSH will test the eye protection's resistance to fogging in accordance with the method specified in BS EN 168:2002, Clause 16, Test for resistance to fogging of oculars. The lens shall remain free from fogging for a minimum of 8 seconds, pursuant to Clause 16.

(d) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51. All approved material is available for inspection at NIOSH, National Personal Protection Technology Laboratory (NPPTL), Bruceton Research Center, 626 Cochrans Mill Road, Pittsburgh, PA 15236. To arrange for an inspection at NIOSH, call 412–386–6111. Copies are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) British Standards Institute, 389 Chiswick High Road, London W4 4AL, UK, *http://www.bsigroup.com/en/Standards-and-Publications:*

(i) BS EN 168:2002, Personal Eye Protectors—Non-Optical Test Methods, November 2001.

(ii) [Reserved]

(2) International Organization for Standardization, 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland, *http://www.iso.org/iso/store.htm:*

(i) ISO 4855–1981(E), Personal Eye Protectors—Non-Optical Test Methods, First edition April 1, 1981.

(ii) [Reserved]

(3) U.S. Department of the Interior, Bureau of Mines, 2401 E Street, NW., MS #9800, Washington, DC 20241–0001. These reports are also available from NIOSH upon request 1–800–CDC–INFO (232–4636).

(i) Pittsburgh Research Center (PRC) Report No. 4294, Evaluation of the Safety of One-Hour Chemical Self Rescuers, July 1980;

(ii) Report of Investigations (RI) 8890, Evaluation of the Safety of One-Hour Compressed Oxygen Self-Rescuers—Results of Destructive Testing, 1984;

(iii) RI 9333 Evaluation of the Safety of the CSE SR–100 Self-Contained Self-Rescuer, 1991.

§ 84.309 Additional testing and requirements for dockable CCERs.

(a) NIOSH will conduct additional testing of the CCERs that are designed to allow the user to resupply the oxygen source and the carbon dioxide scrubber while using the respirator during an escape.

(1) NIOSH will test the docking mechanism and procedure to ensure that they maintain the integrity of the breathing circuit (against the intake of hazardous fumes or gases) and the continuity of the breathing gas supply throughout the docking process.

(2) NIOSH will test the docking mechanism and procedure to ensure that users can employ the docking process reliably, safely, and quickly under escape conditions.

(b) NIOSH will designate CCERs that pass the tests specified in this section as ''Dockable.''

(c) NIOSH will assign the capacity rating to the dockable CCER, as specified under § 84.304(d), by conducting the capacity testing using only the breathing gas supply included for the initial use of the wearable apparatus.

(d) NIOSH will test the supplemental capacities of all breathing gas resupply units produced by the manufacturer for use with the dockable CCER. Such tests will follow procedures consistent with those specified under § 84.304, including the rating requirements in § 84.304(d). The manufacturer must label the breathing gas resupply unit to indicate its capacity as tested by NIOSH and its compatibility with the CCER for which it is designed.

(e) NIOSH may require the applicant to provide additional units of the CCER and breathing gas resupply units to conduct the testing specified in this section.

(f) NIOSH will not approve a CCER with docking components, with or without the ''Dockable'' NIOSH designation, unless it satisfies the testing and other requirements of this section.

§ 84.310 Post-approval testing.

(a) NIOSH will periodically test the capacity and performance of units of approved CCERs.

(b) NIOSH may test units that are new and/or units that have been deployed in the field and have remaining service life.

(c) NIOSH will conduct such testing pursuant to the methods specified in §§ 84.303 through 84.305, except as provided under paragraph (d) of this section.

(d) The numbers of units of an approved CCER to be tested under this section may exceed the numbers of units specified for testing in §§ 84.304 and 84.305.

(e) Failure of a unit to meet the capacity and performance requirements of this section may result in revocation of the approval for the CCER or in requirements for specific remedial actions to address the cause or causes of the failure.

(f) NIOSH will replace deployed units obtained for testing with new NIOSH-approved units of the same or similar design, at no cost to the employer.

(g) To maintain the approved status of a CCER, an applicant must make available for purchase by NIOSH, within 3 months of a NIOSH purchase request, the number of units requested by the Institute. Within any 12-month period, NIOSH will not request to purchase more than 100 units for post-approval testing.

§ 84.311 Registration of CCER units upon purchase.

(a) The user instructions will include a copy of procedures for registering the units with NIOSH. The applicant can obtain a copy of these procedures from the NIOSH web page: *http://www.cdc.gov/niosh/npptl.*

(b) The applicant shall notify in writing each purchaser of the purpose of registering a unit with NIOSH, as specified under paragraph (c) of this section. If the purchaser is a distributor of the CCER, the applicant must request in writing that the distributor voluntarily notify in writing each of its purchasers of the purpose of registering a unit with NIOSH, as specified under paragraph (c) of this section.

(c) ''The National Institute for Occupational Safety and Health (NIOSH) requests, but does not require, that purchasers of this respirator register each unit with NIOSH. Registration will enable NIOSH, which approved this model of respirator, to attempt to notify you if a problem is discovered that might affect the safety or performance of this respirator. Registration will also assist NIOSH in locating deployed units to periodically evaluate whether this respirator model is remaining effective under field conditions of storage and use.''

Dated: October 11, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2012–4691 Filed 3–7–12; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 13, 17 and 23

Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Fifteenth Meeting of the Conference of the Parties to CITES; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13, 17, and 23

[Docket No. FWS–R9–IA–2010–0083; 96300–1671–0000–R4]

RIN 1018–AW82

Revision of Regulations Implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Updates Following the Fifteenth Meeting of the Conference of the Parties to CITES

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (FWS or Service), propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Treaty or Convention) by incorporating certain provisions adopted at the fourteenth and fifteenth meetings of the Conference of the Parties (CoP14 and CoP15) to CITES and clarifying and updating certain other provisions. These changes would bring U.S. regulations in line with revisions adopted at the most recent meetings of the Conference of the Parties, which took place in June 2007 (CoP14) and March 2010 (CoP15). The revised regulations would help us more effectively promote species conservation, help us continue to fulfill our responsibilities under the Treaty, and help those affected by CITES to understand how to conduct lawful international trade.

DATES: *General Comments:* In preparing the final decision on this proposed rule, we will consider comments received or postmarked on or before May 7, 2012.

Comments on the Information Collection Aspects of this Proposal: Comments on the information collection aspects of this proposed rule will be considered if received by May 7, 2012.

ADDRESSES: *General Comments:* You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R9–IA–2010–0083, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–IA–2010–0083; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

Comments on the Information Collection Aspects of this Proposal: Send comments specific to the information collection aspects of this proposed rule to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail) or *infocol@fws.gov* (email). Please identify comments with 1018–AW82.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Management Authority; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203 (telephone, (703) 358–2093; fax, (703) 358–2280).

SUPPLEMENTARY INFORMATION:

Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it entered into force on July 1, 1975, after it had been ratified by 10 countries. Currently 175 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

Section 8A of the Endangered Species Act, as amended in 1982 (16 U.S.C. 1531 *et seq.*) (ESA), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10462, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Treaty and on amendments to the lists of species in the CITES Appendices. The current U.S. CITES regulations (72 FR 48402, August 23, 2007) contain provisions from applicable resolutions and decisions adopted at meetings of the Conference of the Parties up to and including the thirteenth meeting (CoP13), which took place in 2004. In 2008, through a direct final rule, we incorporated certain provisions adopted at CoP14 regarding international trade in sturgeon caviar (73 FR 40983, July 17, 2008).

Proposed Change to 50 CFR Part 13

Scope of regulations (§ 13.3): When we published our current regulations in 2007, we changed the title of 50 CFR part 23. We propose to update the title of 50 CFR part 23 given in § 13.3 to reflect this change.

Application procedures (§ 13.11): We propose to amend the table at § 13.11(d)(4) to include an application to renew the registration of a commercial operation breeding Appendix-I wildlife. See the discussion under § 23.46 in the preamble. We also propose to revise § 13.11(b)(3) by updating the address for the Division of Management Authority and adding the address for the Service's permits Web page.

General information requirements for permit applications (§ 13.12): We propose to update the introductory text of paragraph (b) to clarify that applicants should refer to 50 CFR part 23 for CITES permit application requirements. We also propose to remove from the table at § 13.12(b) the entry for American alligator buyer or tanner permits, because we no longer issue or require such permits.

Proposed Changes to 50 CFR Part 17

Following publication of our current CITES-implementing regulations in August 2007, we became aware that 50 CFR part 17 contains some outdated cross references. Sections 17.62 and 17.72 include references to the previous version of the CITES regulations, and the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h) contains references to a special rule that no longer exists for threatened caiman. When we updated our CITES regulations in 2007, we also amended and consolidated the special rules for threatened crocodilians contained in 50 CFR 17.42. As part of that process, we incorporated the special rule for threatened caiman into the special rule for threatened crocodilians, but that change was not reflected in § 17.11. We propose to update references in part 17 so that they correspond correctly with

the current regulations in 50 CFR part 23 and the special rules in 50 CFR 17.42.

Some of the special rules in 50 CFR part 17 contain elements that are outdated or contain CITES requirements that are more appropriate for inclusion in 50 CFR part 23. Most of the special rules that pertain to CITES-listed species were written before the publication of our 2007 CITES regulations. Some of the rules include detailed CITES requirements because those requirements were not contained in 50 CFR part 23 prior to 2007. We propose to remove specific CITES requirements from the special rules in 50 CFR part 17 and, if they are not there already, insert them into our CITES regulations in 50 CFR part 23. These proposed changes, with a few exceptions noted below, do not alter the requirements of the special rules because the requirements added to or already contained in 50 CFR part 23 are functionally the same as those currently contained in the special rules. Under the special rules, specimens may only be imported into the United States if the requirements in 50 CFR part 23 have been met.

The special rules for vicuña (50 CFR 17.40(m)) and beluga sturgeon (50 CFR 17.44(y)) include information regarding CITES requirements for trade in personal and household effects that is now fully contained in 50 CFR 23.15. To reduce redundancy and improve the accuracy and clarity of our regulations, we propose to remove the detailed information on personal and household effects from 50 CFR 17.40(m) and 50 CFR 17.44(y) and refer the readers of those paragraphs to the CITES regulations in 50 CFR part 23. In the special rule for beluga sturgeon, the text regarding personal and household effects contains the quantity of beluga sturgeon caviar (250 grams) that qualifies as a personal or household effect. When the special rule was written, 250 grams was the quantity of sturgeon caviar that CITES Parties had agreed could be traded under the personal or household effects exemption. Since then, the CITES Parties have reduced the quantity of sturgeon caviar that qualifies as a personal or household effect from 250 grams to 125 grams. We have revised our CITES regulations accordingly (see 50 CFR 23.15 and 73 FR 40983, July 17, 2008). By removing the provisions on personal and household effects and directing readers of the special rule to the requirements in 50 CFR part 23, as proposed here, we would effectively bring the beluga sturgeon special rule in line with current CITES requirements. We believe this reduction in the quantity of beluga sturgeon caviar that can be transported as a personal or household effect is necessary and advisable for the conservation of the species.

The special rules for African elephant (50 CFR 17.40(e)) and vicuña (50 CFR 17.40(m)) contain CITES requirements for marking of specimens in international trade. We believe it is more appropriate to include these marking requirements in our CITES regulations in 50 CFR part 23. Therefore, we propose to remove the trophy-marking requirements, including the definition of ''lip mark area,'' from the African elephant special rule in 50 CFR 17.40(e) and insert them into 50 CFR 23.74, which covers international trade in personal sport-hunted trophies. At CoP15, the Parties adopted a change to the accepted methods for marking of elephant ivory to allow the use of new technologies for permanent marking, including the use of lasers. We propose to incorporate this change into 50 CFR 23.74 and clarify the marking requirements for elephant ivory consistent with Resolution Conf. 10.10 (Rev. CoP15). (See the discussion in the preamble for § 23.74.) We supported the change to the marking requirements at CoP15 and believe these updates are necessary and advisable for the conservation of the species. Under the special rule, African elephant trophies may only be imported into the United States if the requirements (including marking requirements) in 50 CFR part 23 have been met.

Likewise, we propose to remove from the vicuña special rule in 50 CFR 17.40(m) the specific requirements for labeling cloth made from vicuña wool and products made from such cloth, since these are CITES marking requirements, and insert them into a new section in 50 CFR part 23. The labeling requirements in the special rule were drawn from the annotations to the CITES Appendix-II listings for vicuña (see 67 FR 37695, May 30, 2002) that were in place at the time the special rule was written. Since publication of the special rule in 2002, the annotations have been amended by the CITES Parties, most recently at CoP14. We supported the changes adopted at CoP14 and propose to update our labeling requirements to bring them in line with the CITES requirements contained in the current Appendix-II listing annotations for vicuña. These changes will facilitate effective enforcement of conservation measures put in place by the range countries and are therefore necessary and advisable for the conservation of the species. We will retain the marking requirements in the special rule for shipments of wool (referred to as fiber in the current text of § 17.40(m)) sheared from live vicuña because marking of raw wool is not required under CITES. The current text of § 17.40(m) refers to ''raw fiber'' to describe shipments of raw vicuña wool. We propose to amend this language by using the term ''raw wool'' instead of ''raw fiber'' to more accurately characterize the specimens in trade.

In addition, we propose to remove text from the vicuña special rule that addresses the need for the exporting countries to have designated a Management Authority and a Scientific Authority because this requirement is now contained in 50 CFR 23.26. These proposed changes will not alter the requirements of the special rule because the requirements contained in 50 CFR part 23 are functionally the same as those currently contained in the special rule.

We propose to further update the vicuña special rule by clarifying that the exemption under § 17.40(m) applies only to wool sheared from live animals and to cloth and other products made from such wool. We also propose minor edits for clarity and uniformity with other special rules.

We propose to update the address for the Division of Management Authority given in 50 CFR 17.9, 50 CFR 17.21, and 50 CFR 17.44(y), and for the Office of Law Enforcement in 50 CFR 17.40(b) and (h). We propose to clarify in § 17.40(b) who is responsible for reporting take of grizzly bears. We also propose to insert the scientific name for leopard into the special rule in 50 CFR 17.40(f).

We propose to delete Appendix A to 50 CFR Chapter I and the reference to Appendix A in 50 CFR 17.40(e). Appendix A contains an outdated list of two-letter country codes established by the International Organization for Standardization (ISO). The Appendix was added when the African elephant special rule (§ 17.40(e)) was revised in 1982 (47 FR 31384, July 20, 1982) because the country of origin, indicated by the ISO country code, is part of the information that must be included in an ivory mark. An up-to-date list of ISO country codes is now available on both the ISO and CITES Secretariat's Web sites, and we therefore believe it is unnecessary to retain the list in Appendix A.

Proposed Changes to 50 CFR Part 23

Deciding if the regulations apply to your proposed activity (§ 23.2): We propose to add a paragraph to the table in § 23.2 to clarify that if a CITES

specimen you possess or want to enter into intrastate or interstate commerce is subject to restrictions on its use after import then the regulations in part 23 apply. We also propose to update the table in § 23.2 to reflect changes proposed for § 23.92. See the discussion in the preamble regarding proposed changes to § 23.92 on exempt wildlife and plants.

Definitions (§ 23.5): Whenever possible we define terms using the wording of the Treaty and the resolutions.

Definitions of ''bred for noncommercial purposes'' and ''cooperative conservation program'': Article VII, paragraph 4, of the Treaty states that specimens of Appendix-I wildlife species bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II. Such specimens can therefore be traded without the need for an import permit (see §§ 23.18 and 23.46). It also provides in Article VII, paragraph 5, that specimens that are bred in captivity may be traded under an exemption certificate (see §§ 23.18 and 23.41). Although the Treaty does not use the term ''bred for noncommercial purposes'' in Article VII(5), the Parties have agreed to use this term as the intended meaning of paragraph 5 because Article VII(4) addresses specimens bred for commercial purposes.

Our current regulations contain definitions of ''bred for noncommercial purposes'' and ''cooperative conservation program.'' These terms were defined based on the interpretation of Article VII, paragraph 5, adopted at CoP11 in Resolution Conf. 11.14 and subsequently (until CoP14) contained in Resolution Conf. 12.10. Our current definition of ''bred for noncommercial purposes'' specifies that a specimen only qualifies to be treated as bred for noncommercial purposes, and therefore eligible for an exemption certificate, if every donation, exchange, or loan of the specimen is between facilities that are involved in a cooperative conservation program. At CoP14, the Parties removed the definition of ''bred for noncommercial purposes'' from Resolution Conf. 12.10 (including the reference to cooperative conservation programs) because it was considered to be outside the scope of the resolution, which addresses the procedure for registering and monitoring operations that breed Appendix-I animal species for commercial purposes. The deletion of this paragraph from the resolution leaves it to the Parties to adopt their own interpretation of Article VII, paragraph 5.

The changes adopted at CoP14, and our experiences since publication of our current regulations, have led us to reconsider our definition of ''bred for noncommercial purposes.'' We propose to amend our definition of ''bred for noncommercial purposes'' by removing the requirement that the trade be conducted between facilities that are involved in a cooperative conservation program and, consequently, remove from our regulations the definition of ''cooperative conservation program'' consistent with recent amendments to CITES resolutions. We are aware that it is not always feasible for a breeding operation to participate in or support a recovery activity in cooperation with a range country, as required under our current definition of ''bred for noncommercial purposes.'' The change proposed would allow an Appendix-I specimen that was bred in captivity to be traded under a CITES exemption certificate where each donation, exchange, or loan of the specimen is noncommercial (e.g., noncommercial breeding by hobbyists), including situations where the donation, exchange, or loan is not between two facilities that are participating in a cooperative conservation program. Our proposed amendment to the definition is consistent with the current CITES resolutions. See also the discussion in the preamble for § 23.18.

Coral definitions: We propose to amend our definitions of ''coral (dead),'' ''coral fragments,'' ''coral (live),'' and ''coral sand'' in § 23.5 by adding text contained in the coral definitions in the Annex to Resolution Conf. 11.10 (Rev. CoP15) regarding the level to which certain coral specimens are identifiable. This clarifying information was inadvertently omitted from the definitions of these terms in our current regulations. In addition, we propose to add a definition of ''coral (stony)'' consistent with Resolution Conf. 11.10 (Rev. CoP15), to clarify that the coral definitions in § 23.5 apply to stony corals in the orders Helioporacea, Scleractinia, Stolonifera, Milleporina, and Stylasterina. Due to problems we have encountered in the implementation of the requirements for trade in stony corals, we propose to further revise the definitions of ''coral fragments'' and ''coral sand'' to clarify the size of a specimen that meets the definition of a ''coral fragment'' or ''coral sand'' and may therefore be considered exempt from the provisions of CITES. The same clarification regarding ''coral fragments'' was adopted by the Parties at CoP15. To be consistent, we also propose to clarify the size of a specimen that meets the definition of ''coral rock.''

Definition of ''cultivar'': Prior to CoP15, the CITES Parties had not defined ''cultivar,'' a term that is used in the CITES Appendices and resolutions. We defined the term in our current regulations based on horticultural and common dictionary definitions. At CoP15, the CITES Parties adopted a definition of ''cultivar'' in Resolution Conf. 11.11 (Rev. CoP15), which is taken from the eighth edition of the International Code of Nomenclature for Cultivated Plants (Brickell, C.D., Alexander, C., David, J.C., Hetterscheid, W.L.A., Leslie, A.C., Malecot, V. & Xiaobai Jin (eds.) (2009)). We propose to amend the definition of ''cultivar'' in § 23.5 to more closely match the definition adopted by the Parties at CoP15.

Definition of ''introduction from the sea'': We propose to amend the definition of this term by adding a clarification of the phrase ''marine environment not under the jurisdiction of any country.'' The definition of ''introduction from the sea'' in Article I, paragraph (e), of the Treaty contains the phrase ''marine environment not under the jurisdiction of any State.'' At CoP14, the Parties agreed to a definition of this phrase, in Resolution Conf. 14.6, which we propose to incorporate into our regulations. CITES Parties typically use the word ''State'' to mean country. In our regulations, we use the word ''country'' and so have chosen to use the word ''country'' in place of ''State'' in our definition of introduction from the sea. The CITES Parties continue to work toward achieving a common understanding of the practical application of CITES provisions for introduction from the sea. At CoP15, the Parties agreed that operation of the Standing Committee's working group on introduction from the sea should be extended. In the meantime, our current regulations specify when introduction-from-the-sea provisions apply and what CITES documents are needed for this type of international trade.

Definition of ''ranched wildlife'': At CoP14, the Animals and Plants Committees were tasked with determining species for which CITES source code ''R'' (for ''specimens originating from a ranching operation'') has been used, surveying countries that have been applying source code ''R'' to species other than crocodilians transferred from Appendix I to Appendix II pursuant to ranching, and, if necessary, proposing a revised definition of source code ''R'' for consideration at CoP15. The United States participated in a working group

established to undertake these activities. The group was directed, among other things, to consider the definition of ''ranching'' and the use of source code ''R.'' At CoP15, the Parties adopted a revised definition of source code ''R'' based on the recommendations of the working group. We propose to incorporate the new definition of source code ''R'' into § 23.5, consistent with the change to Resolution Conf. 12.3 (Rev. CoP15) adopted at CoP15.

Contact information for U.S. CITES Authorities (§ 23.7): The Management Authority and Scientific Authority offices have moved since our current regulations were published. We propose to update the addresses for these offices.

Information collection (§ 23.8): We propose minor edits to this section to incorporate changes, since our regulations were last updated, to the OMB Control Numbers assigned to the information collections associated with 50 CFR part 23.

Prohibitions (§ 23.13): We propose to add text to clarify that violation of any of the provisions of 50 CFR part 23, including use of CITES specimens imported into the United States contrary to what is allowed under § 23.55, is unlawful.

Documents for the export of Appendix-I wildlife and plants (§§ 23.18 and 23.19): Sections 23.18 and 23.19 contain decision trees to help readers determine what type of CITES document is needed for export of an Appendix-I specimen and where in the regulations they can find information regarding the different types of documents. We propose to amend the titles of the decision trees in §§ 23.18 and 23.19 to more accurately reflect their purpose. In addition, we have reevaluated our requirements for export of Appendix-I wildlife and we propose to amend the decision tree in § 23.18 accordingly.

Article VII, paragraph 4, of the Treaty states that specimens of Appendix-I wildlife species bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II. Such specimens can therefore be traded without the need for an import permit. Our current regulations require commercial breeders of Appendix-I wildlife to be registered with the CITES Secretariat in order to export Appendix-I specimens, regardless of the purpose of the import. The decision tree asks, at several points, whether the export of the specimen is for noncommercial purposes. However, because of the way the decision tree is structured, export of specimens bred in captivity (according to CITES criteria) at commercial operations that are not registered with the CITES Secretariat is prohibited, even in small numbers when the intended use of the specimens in the importing country is noncommercial.

Based on our experience since publication of our regulations in 2007, we have concluded that this interpretation is overly restrictive. The exemptions contained in Article VII allow alternatives to the procedures contained in Articles III, IV, and V for trade in CITES-listed species when certain criteria are met. However, if an Appendix-I specimen does not qualify for an exemption under Article VII, it should not, solely on that basis, also be deemed ineligible for a permit or certificate under Article III. We propose to amend the decision tree in § 23.18 by eliminating the boxes that ask if the export is for noncommercial purposes, which will eliminate the requirement that commercial operations breeding Appendix-I species must be registered with the Secretariat to export specimens under any circumstances. We believe this change reflects the appropriate implementation of Articles III and VII. We note, however, that we will continue to scrutinize this trade very carefully and will exercise our right and responsibility under the Treaty to verify whether the Management Authority of the importing country has made the appropriate determination of whether an import is not for primarily commercial purposes. See also the discussion in the preamble for § 23.5 regarding proposed changes to the definition of ''bred for noncommercial purposes.''

Information required on CITES documents (§ 23.23): This section details information that must be included on CITES documents. We propose to amend the first sentence of § 23.23(b), where our regulations currently indicate that a CITES document must be ''printed,'' to reflect agreement by the Parties at CoP15 that CITES documents may be issued in an electronic format. While the Parties agreed that it was possible to issue CITES documents electronically, they also recognized that there is no obligation on Parties to do so. Unless there is specific agreement by all Parties involved that electronic documents are acceptable, Parties issuing electronic documents must also issue them in paper format. Although the United States is not in a position to issue or accept electronic permits at this time, we are aware that other Parties have begun to implement such a system and therefore propose this minor amendment to § 23.23(b).

We currently require that CITES export and re-export documents for live wildlife contain a specific condition that the document is only valid if the transport complies with certain humane-transport standards. The CITES *Guidelines for transport and preparation for shipment of live wild animals and plants* (CITES *Guidelines*) and the International Air Transport Association (IATA) *Live Animals Regulations* are incorporated by reference into our regulations at § 23.23(c)(7). The CITES *Guidelines* have not been updated since 1981. At CoP14, recognizing that IATA regulations are amended annually and are therefore more responsive to changing needs, and that it is important to provide humane transport conditions for plants as well as wildlife, the Parties agreed to promote the full and effective use of IATA's *Live Animals Regulations* (for animals) and *Perishable Cargo Regulations* (for plants) as the standards for the preparation and transport of live specimens. Therefore, we propose to remove reference to the CITES *Guidelines* and to incorporate by reference the 10th edition of the IATA *Perishable Cargo Regulations* as the standard for the transport of CITES-listed plants. We propose to further update our regulations by incorporating by reference the 37th edition of the IATA *Live Animals Regulations* to replace the 33rd edition that is incorporated by reference in our current regulations.

We propose to add language in § 23.23(c) and (e) to clarify that, for products containing more than one CITES species, the CITES document must include specific information (Appendix, scientific name, quantity, source code) for each species. See the discussion in the preamble for § 23.71. We also propose to amend § 23.23(c)(16) to allow the use of official signature stamps on CITES documents, in recognition of this global practice.

Under most circumstances, specimens must be identified on CITES documents using the scientific name of the species to which they belong. The Parties have agreed to a few specific exceptions to this requirement, which are detailed in Resolution Conf. 12.3 (Rev. CoP15). Recognizing the difficulties associated with identification of worked specimens of certain corals in trade, at CoP15 the Parties amended Resolution Conf. 12.3 (Rev. CoP15) to allow the use of higher-taxon names for worked specimens of black coral (Antipatharia). The Parties agreed that worked specimens of black coral may be identified at the genus level where the species cannot be readily determined, and where the genus cannot be readily determined the specimens may be identified using the

scientific name of the order Antipatharia. We propose to revise § 23.23(c)(13)(i) to allow the use of higher-taxon names for worked specimens of black coral consistent with the changes adopted at CoP15. We will continue to require that raw black coral and live black coral be identified at the species level.

At CoP14, the Parties agreed to a new quota-setting process for caviar from shared stocks, including a change in the quota year so that it would coincide with the harvest season rather than the calendar year. From 2008 onward, the quota year for caviar from shared stocks begins on the first of March and ends on the last day of February of the following year. We updated § 23.71 accordingly (see 73 FR 40983, July 17, 2008) and now propose to revise the language in § 23.23(e)(5)(i) by removing the word ''calendar'' to accommodate situations in which quotas are set for a 12-month period other than a calendar year.

Source codes (§ 23.24): Our current regulations in § 23.24 indicate that the source code ''O'', for pre-Convention specimens, must be used in conjunction with another source code. This requirement has caused problems at our ports of entry because it is not entirely consistent with the language in Resolution Conf. 12.3 (Rev. CoP15), which states that the pre-Convention source code ''may'' be used in conjunction with another source code. We propose to revise § 23.24 so that it is more closely aligned with Resolution Conf. 12.3 (Rev. CoP15).

We propose to revise the text for source code ''R'' (ranched wildlife) to point readers to § 23.5, where we have proposed to insert the definition of ''ranched wildlife'' adopted by the Parties at CoP15 in Resolution Conf. 12.3 (Rev. CoP15) (see discussion in the preamble for § 23.5).

In § 23.24(d), we propose to add a reference to the definition of ''captive-bred wildlife'' in § 23.5 to clarify that such specimens must meet the definition in that section. In addition, we propose to remove § 23.24(d)(2)(iii), which refers to cooperative conservation programs, to reflect the changes we have proposed to the definition of ''bred for noncommercial purposes.'' See the preamble discussion regarding the definition of ''bred for noncommercial purposes'' in § 23.5.

Validity of CITES documents (§ 23.26): We propose to add three additional circumstances in § 23.26(d) for which we may request verification of a CITES document. When the CITES Secretariat receives information about a quota for publication, there may be technical problems or questions about technical or administrative aspects of the quota that need clarification. Under guidelines contained in Resolution Conf. 14.7 (Rev. CoP15), if the Secretariat is unable to resolve these issues with the Party concerned, the Secretariat is directed to publish the quota with an annotation to indicate its concerns. We wish to notify the public that we may request verification of a CITES document if it is issued for a species with an annotated quota that raises concerns about the validity of the shipment. We may also request verification of a CITES document for a shipment of captive-bred Appendix-I wildlife when the specimens did not originate from a breeding operation that is registered with the CITES Secretariat and we have reason to believe the import is for commercial purposes. In addition, if we receive a CITES export document on which the actual quantity exported has not been validated or certified at the time of export we may request verification of the document.

We have proposed to update the documents incorporated by reference into our regulations at § 23.23(c)(7) that provide guidance on humane transport of live specimens. (See the preamble discussion for § 23.23.) We propose to update the entry on humane transport in the table at § 23.26 to reflect these changes.

Presentation of documents at the port (§ 23.27): We propose to add text from the Treaty to this section to highlight the requirement for Management Authorities to cancel and retain original CITES documents upon import. We also propose to clarify that authorized inspecting officials for imports into the United States of CITES-listed plants are responsible for the cancellation and collection of original documents for submission to the U.S. Management Authority. FWS Law Enforcement collects and makes available to the U.S. Management Authority original CITES documents accompanying wildlife shipments entering the United States. Original CITES documents accompanying imports of CITES-listed plant specimens are collected by U.S. Customs and Border Protection (CBP) and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), for submission to the U.S. Management Authority. Documents are maintained in accordance with the FWS Records Disposition Schedule.

Records for ranched specimens and for plants grown from exempt plant material (§ 23.34): The table at § 23.34 provides information on the types of records an individual may provide to show the origin of a specimen when applying for a U.S. CITES document. We are proposing a minor revision to the entry in the table for ''exempt plant material'' to make it clear that we are referring to plants grown from exempt plant material and not the exempt material itself, which does not require a CITES document.

Prior to CoP15, we considered any specimen that had been removed from the wild at an early age and raised in captivity to be wild-caught, and as a result, we used the source code ''W'' when issuing CITES documents for these specimens. With this proposed rule, however, we intend to incorporate into our regulations the definition of ''ranched specimen'' adopted at CoP15 (see the preamble discussions for §§ 23.5 and 23.24). Many of the specimens we previously considered ''wild'' will qualify as ''ranched'' under the new definition. We propose to add an entry to the table in § 23.34 describing the types of records an applicant may want to provide to demonstrate that his or her specimens qualify for issuance of a CITES document with source code ''R'' (ranched wildlife).

Trade in Appendix-I plant hybrids (§§ 23.19, 23.23, 23.40, 23.42, 23.47, and 23.92): We propose to add cross-references in §§ 23.40 and 23.47 to clarify the required use of different types of CITES documents and different source codes for hybrids of Appendix-I plant species or taxa depending on whether the Appendix-I listings are annotated to treat hybrids as Appendix-I specimens. We also propose to amend text in §§ 23.19, 23.23, 23.40, 23.42, and 23.92 that refers to certain Appendix-I plant listings as ''not annotated to include hybrids'' so that it instead refers to these listings as ''not annotated to treat hybrids as Appendix-I specimens.'' These revisions do not change the meaning or the intent of these sections, but more accurately describe CITES provisions regarding annotations and Appendix-I plant hybrids.

Applications for export permits (§§ 23.36, 23.41, 23.69, 23.70, and 23.71): Over the years, to facilitate the application process, we have developed applications for CITES documents that are tailored to specific activities. Since our regulations were last updated, we have created two new application forms: One for the export of sturgeon and sturgeon products from aquaculture facilities; and another for establishment of a master file for the export of live animals that qualify as bred-in-captivity. The Office of Management and Budget (OMB) approved the collection of information associated with these application forms under OMB Control Number 1018–0093, which expires

February 28, 2014. We propose to add references to the new applications in the relevant sections of the regulations (§§ 23.41 and 23.71). We also propose to add these new applications to the table in § 23.36, which lists the types of applications (and the FWS form numbers) for export permits. In addition, we propose to update the entry in the table for the application to export trophies, to make clear that it can be used by both hunters and taxidermists. We have made some changes to the application procedures for export of products made from crocodilian skins or fur skins. We propose to update §§ 23.69 and 23.70 to reflect these changes.

Seeds and spores (§§ 23.40 and 23.64): At CoP15, the CITES Parties amended Resolution Conf. 11.11 (Rev. CoP15) so that all references to the term ''seeds'' also refer to ''spores,'' since seeds and spores are treated the same way under CITES. We propose to make a corresponding change to subparagraph (e)(1) in § 23.40 and to subparagraph (g)(4)(ii) in § 23.64, to refer to ''seeds or spores,'' consistent with Resolution Conf. 11.11 (Rev. CoP15).

Wildlife hybrids (§ 23.43): Section 23.43 allows for an exemption from CITES document requirements for hybrid wildlife specimens that meet specific criteria. We propose to clarify that an individual who is unable to clearly demonstrate that his or her wildlife specimen meets the criteria for an exempt hybrid must obtain a CITES document. Since 2007, when our current regulations were published, we have experienced problems at our ports with individuals claiming the exemption for hybrids without documentation to clearly demonstrate that their specimens meet the criteria. We propose to provide examples of the types of records an individual may use to demonstrate that a particular specimen meets the criteria for an exempt hybrid. Records used to demonstrate that a specimen meets the criteria for the exemption must both clearly identify the wildlife specimen and describe its recent lineage. Many pedigrees simply provide names of animals in a specimen's lineage, but fail to show the relationship to any CITES-listed animals in its ancestry or any other information to clearly show that the animal to be traded has no purebred CITES species in its previous four generations. A certified pedigree that can be identified as belonging to the specimen to be traded and that contains the scientific names of the animals in the specimen's lineage, and therefore clearly illustrates its genetic history, would show whether or not the specimen meets the criteria for an exempt wildlife hybrid. Lack of adequate documentation does not prevent the international movement of a hybrid wildlife specimen, but it does require the importer or exporter to obtain the appropriate CITES document.

International travel with personally owned, live wildlife (§ 23.44): Since publication of our current regulations in 2007, we have become aware of some confusion regarding the purpose and appropriate use of certificates of ownership for personally owned live wildlife (also known as a ''pet passports''). We propose to clarify that such documents are to be used for frequent, short-term travel by an individual when accompanied by his or her personally owned, live wildlife (e.g., for vacations, to attend competitions, or for similar purposes of relatively short duration) and that this individual is to return with the wildlife to his or her country of usual residence at the end of the trip. Travel of longer duration, including an international move, should take place under a CITES export or re-export document, not under a certificate of ownership. We propose to add text to § 23.44 to specify that, for certificates issued by the U.S. Management Authority, the owner must return to the United States with the animal covered by the certificate of ownership before the certificate expires, similar to the requirements for specimens covered under a traveling exhibition certificate (see § 23.49).

Registration of a commercial breeding operation for Appendix-I wildlife (§ 23.46): Article VII, paragraph 4, of the Treaty states that specimens of Appendix-I animal species bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II. For such specimens, a Management Authority may grant an export permit or a re-export certificate without requiring the prior issuance of an import permit, thus allowing the specimens to be traded commercially. However, the species remain listed in Appendix I, and therefore such specimens are not eligible for any exemption limited specifically to an Appendix-II species or taxon, such as less-restrictive provisions for personal and household effects.

Resolution Conf. 12.10 (Rev. CoP15) provides guidelines for registering and monitoring operations that breed Appendix-I animals for commercial purposes. Section 23.46 implements the resolution by establishing a procedure for operations that breed Appendix-I animals for commercial purposes to become registered with the CITES Secretariat. At CoP15, the Parties adopted changes to the registration process to address the sometimes lengthy delays that can occur when an objection is raised regarding an application to register a breeding facility. Previously, if the concerns of the objecting Party could not be resolved through consultation with the proponent Party, the registration application would be decided by a vote of the Parties at the next CoP. Depending on when the objections were raised, up to 3 years could pass before a decision was taken. The revisions adopted at CoP15 reduce the time frame (from 60 to 30 days) for consultations between the objecting Party and the proponent Party, and if those consultations do not resolve the objection, the Secretariat will submit the registration application to the Standing Committee at its next regular meeting, which would usually occur within a year. We expect that referring disputed applications to the Standing Committee instead of the CoP will significantly reduce potential delays in the registration process. We propose to revise § 23.46(b) to incorporate changes to the registration process adopted at CoP15.

Under Resolution Conf. 12.10 (Rev. CoP15), registered commercial breeding operations are to be monitored by the Management Authority, in collaboration with the Scientific Authority, and the Management Authority is to advise the CITES Secretariat of any major change in the nature of an operation or in the products it is producing for export. Our current regulations include an annual reporting requirement to facilitate monitoring of registered operations. We propose to eliminate the annual reporting requirement in § 23.46 and establish instead a process for registration renewal. The registration renewal will be less burdensome for the registrants, but will allow us to monitor these facilities and identify major changes in their operating practices.

We propose to limit the length of time a registration is valid to not more than 5 years. The proposed criteria for renewal are the same as the criteria for registration of a new operation. However, unlike the process for initially registering a commercial breeding operation, the renewal process does not require us to contact the CITES Secretariat or to consult other CITES Parties. If necessary, upon renewal or at any time we receive significant new information on a registered operation, we will provide the updated information to the CITES Secretariat.

Replacement documents (§ 23.52): A Management Authority may issue a replacement CITES document when the

original document has been lost, damaged, stolen, or accidentally destroyed. Section 23.52 contains provisions for issuance and acceptance of replacement CITES documents. We propose to clarify the procedures and amend the criteria for issuance and acceptance of replacement CITES documents in the United States. Since the publication of our 2007 CITES regulations, we have experienced situations in which individuals have significantly delayed submission of required documents for clearance of a shipment while they tried to obtain a replacement document without our knowledge. In addition, importers or their agents have attempted to submit ''replacement'' documents when no document had ever been issued or when the original document was invalid. We propose to more closely align the criteria for issuance and acceptance of replacement CITES documents in the United States with those for issuance and acceptance of retrospective documents found in § 23.53. Proposed amendments to the criteria include: Requirements that specimens are presented to the appropriate official at the time of import and that the request for a replacement document is made at that time; the need for proof of original valid documents; and a statement of responsibility.

In the United States, an individual may qualify to receive multiple single-use CITES documents under a master file or annual program. We propose to clarify that you may not use one of the documents issued under a master file or annual program as a replacement document, but must apply for and receive a separate replacement document. The amendments we are proposing to this section will clarify the requirements and procedures for obtaining a replacement CITES document.

Retrospective CITES documents (§ 23.53): In certain limited circumstances, CITES documents may be issued and accepted to authorize an export or re-export that has already occurred or to correct technical errors on a document accompanying a shipment that has already occurred. We propose to add text to clarify that we may issue or accept a retrospective document in circumstances where a technical error was made by the issuing Management Authority at the time the original document was issued. As we have for replacement documents, we propose to clarify in this section that an individual may not use a CITES document issued under a master file or an annual program as a retrospective document, but must apply for and receive a separate retrospective document (see the discussion in the preamble for replacement documents, § 23.52). We also propose to clarify that ''personal or household effects'' in § 23.53(d)(7)(i) means specimens that meet the definition of ''personal effect'' or ''household effect'' in § 23.5.

Use of CITES specimens after import into the United States (§ 23.55): This section provides conditions for the import and subsequent use of certain CITES specimens. Its purpose is to prevent commercial use of specimens after import into the United States when the trade allowed under CITES is only for a noncommercial purpose. Under Article II of the Treaty, trade in Appendix-I specimens ''must only be authorized in exceptional circumstances.'' Unless an Appendix-I wildlife or plant specimen qualifies for an exemption under Article VII of the Treaty, it can be imported only when the intended use is not for primarily commercial purposes. The import and subsequent use of Appendix-I specimens and certain Appendix-II specimens, including transfer, donation, or exchange, may be only for noncommercial purposes. Other Appendix-II specimens and any Appendix-III specimen may be used for any lawful purpose after import, unless the trade allowed under CITES is only for noncommercial purposes. See the preambles in our previous rulemaking documents, 71 FR 20167, April 19, 2006 (proposed rule), and 72 FR 48402, August 23, 2007 (final rule), for further discussion.

Since publication of our regulations in 2007, we have given further consideration to the allowed use of a specimen within the United States when the listing status of the species changes after a specimen has been imported. We propose to amend this section to clarify that the allowed use after import into the United States is determined by the current status of the specimen under CITES and the ESA, except for a specimen of an Appendix-I species or an Appendix-II species annotated for noncommercial purposes that was imported before the species was listed in Appendix I or listed in Appendix II with an annotation disallowing commercial use. Where an individual can demonstrate that his or her specimen was imported with no restrictions on its use after import, prior to the species being listed in Appendix I or Appendix II with a relevant annotation, we propose to continue to allow its unrestricted use within the United States.

We have considered the individual who may, for example, have imported Appendix-II specimens that had no restrictions on their domestic use and be lawfully utilizing the specimens as part of a commercial breeding operation. Under our current regulations, he or she may be precluded from continuing such activities if the species is subsequently listed in Appendix I. We do not believe it is necessary for ensuring the conservation and sustainable use of the species to retroactively apply current import-export restrictions to domestic use of specimens that were legally imported prior to the imposition of those restrictions. Therefore, where an individual can clearly demonstrate that his or her specimens were legally imported prior to the Appendix-I listing, we propose not to treat those specimens as specimens of an Appendix-I species with regard to their use within the United States.

Consistent with our current regulations, we continue to believe that restrictions on the allowed use after import of specimens of Appendix-I species may be relaxed if the status of the species improves and it is subsequently listed in Appendix II or removed from the Appendices. If the status of a species has changed so that it no longer requires the strict protections (including the prohibition on commercial trade) provided by an Appendix-I listing and it is not listed under the ESA, we see no conservation need for requiring that specimens imported when the species was listed in Appendix I continue to be used only for noncommercial purposes. Other applicable laws, however, may continue to restrict use of the specimen.

Under the change we are proposing, if an Appendix-II specimen is imported with no restrictions on its use (i.e., it is not protected under the ESA and it is not subject to an annotation requiring that it be used only for noncommercial purposes) and the species is subsequently transferred to Appendix I, if you can clearly demonstrate that your specimen was imported prior to the Appendix-I listing, use of the specimen within the United States will not change (i.e., it will not be restricted) with the change in the status of the species under CITES. As is currently the case, the allowed use of an Appendix-I specimen imported for noncommercial purposes may change if the species is subsequently transferred to Appendix II or removed from the Appendices. In such a case, the allowed use of the specimen within the United States will be determined by the current listing status of the species, not the status of the species at the time it was imported.

We also propose to revise the list in § 23.55(d) of Appendix-I specimens

imported with a CITES exemption document that may be used for any lawful purpose after import (unless other restrictions apply), by adding hybrid plants derived from one or more unannotated Appendix-I species exported under a certificate for artificially propagated plants (with a source code ''A''). The Parties have agreed, in Resolution Conf. 11.11, that such specimens are regarded as being included in Appendix II.

Conditions on CITES documents (§ 23.56): We are proposing to update the documents incorporated by reference into our regulations at § 23.23(c)(7) that provide guidance on humane transport of live specimens. (See the preamble discussion for § 23.23.) We propose to update the text at § 23.56(a)(2) regarding humane-transport conditions to reflect these changes.

Trade in native CITES furbearer species (§ 23.69): We propose to revise the title of this section and the definition of ''CITES furbearers'' by adding the phrase ''harvested in the United States'' to the end of both to clarify the scope of this section. Our current regulations at § 23.69 define ''CITES furbearers'' to mean bobcat (*Lynx rufus*), river otter (*Lontra canadensis*), Canada lynx (*Lynx canadensis*), and the Alaskan populations of gray wolf (*Canis lupus*) and brown bear (*Ursus arctos*). For consistency and clarity, we propose to further amend our definition of ''CITES furbearers'' to include all U.S. populations of gray wolf and brown bear. All five of the species included in our definition of ''CITES furbearers'' are listed in CITES Appendix II. Certain populations of three of these species, Canada lynx, gray wolf, and brown bear, are also listed under the ESA. We initially considered that only the Alaskan populations of gray wolf and brown bear should be included in our definition of ''CITES furbearers'' because the Alaskan populations are not ESA-listed. However, the same is true for the Canada lynx, which is included in our definition throughout its U.S. range. Upon further review, we believe it is more appropriate to base the definition of ''CITES furbearers'' on the CITES listings of these species. The definition in § 23.69 includes those native furbearers for which States may request approval of a CITES export program. Although the State of Alaska is the only State that currently has CITES export approval for gray wolf or brown bear, we do not want to prohibit other States from seeking export approval for these species in the future if the legal and conservation status of their populations change.

Section 23.69 details the CITES requirements for import, export, or re-export of fur skins from CITES furbearers and the requirements that must be met for export approval of State or tribal programs for CITES furbearers. Activities involving specimens from populations of CITES furbearers that are protected under the ESA must also meet the requirements for ESA-listed species in part 17 and elsewhere in this title (see § 23.3).

Tagging of CITES fur skins and crocodilian skins (§§ 23.69 and 23.70): We propose to amend §§ 23.69 and 23.70 to clarify the appropriate use of CITES replacement tags for CITES fur skins and crocodilian skins. These sections specify that skins with broken, cut, or missing tags may not be exported and provide a procedure for obtaining replacement tags where this is the case. However, the regulations are not intended to allow for the use of CITES replacement tags in place of tags that have been deliberately removed to facilitate processing or for other reasons. Replacement tags are intended to be used to replace CITES tags that have been inadvertently cut or damaged, or where the original CITES tags are lost. Although CITES tags sometimes break during transport or processing and may sometimes fail as a result of a defect, it has been our experience that the failure rate is very low (less than 5 percent) and that replacement tags are needed infrequently. We also propose to amend the phrases in § 23.69 paragraphs (c)(3) and (c)(3)(i) and in § 23.70 paragraphs (d)(3) and (d)(3)(i) referring to ''broken, cut, or missing'' tags to be more consistent with the terminology used in Resolution Conf. 11.12 (Rev. CoP15).

In addition, we propose to incorporate changes to tagging requirements adopted by the Parties at CoP15, including adding ''tamper-resistant'' to the required characteristics of CITES tags for crocodilians in § 23.70(d)(1)(i) and clarifying that the ''year of production'' in § 23.70(d)(1)(ii) and (iii) and in § 23.70(d)(3)(ii) refers to the year of skin production. We also propose to remove the requirement in § 23.70(d)(2) that chalecos must have a tag attached to each flank, another change adopted by the Parties at CoP15.

Our regulations in § 23.70 pertaining to tagging of crocodilian skins in international trade are based on the tagging requirements laid out in Resolution Conf. 11.12 (Rev. CoP15) and currently require that the year of production or harvest be included in the information permanently stamped on each tag. A question has recently been raised on the CITES Secretariat's electronic forum for Management Authorities regarding the need for all crocodilian tags to contain the year of production or harvest. We agree with the interpretation put forward on the forum that the relevant language from Resolution Conf. 11.12 (Rev. CoP15) concerning the minimum information to be included on a crocodilian tag (''* * * and, where appropriate, the year of skin production or harvest, in accordance with the provisions of Resolution Conf. 11.16 (Rev. CoP15) * * *'') indicates that it may not always be appropriate to include the year of skin production or harvest on the tag. We also agree that the resolution language can be interpreted to mean that it is appropriate to include the year of skin production or harvest on tags for specimens subject to Resolution Conf. 11.16 (Rev. CoP15), i.e., specimens of species from populations that have been transferred from Appendix I to Appendix II for ranching, but not necessarily for all other specimens. The resolution leaves some room for interpretation by the Parties. Therefore, we propose to amend § 23.70(d)(1)(ii) to require that the year of skin production or harvest be included only on tags for crocodilian specimens from populations that have been transferred from Appendix I to Appendix II for ranching. The proposed amendment provides discretion for range countries to decide (based on their national management regimes and systems for tracking specimens in trade, etc.) whether it is appropriate for them to include the year of skin production or harvest on tags they issue for specimens other than those specimens from populations of species that have been transferred from Appendix I to Appendix II for ranching. We will continue to include the year of skin production or harvest on U.S. tags for export of American alligator skins because several of our States require that it be included. These proposed amendments will make our regulations more consistent with Resolution Conf. 11.12 (Rev. CoP15).

Sturgeon caviar (§ 23.71): We propose to revise this section to provide further guidance on caviar-labeling requirements and the requirements for trade in sturgeon and sturgeon products other than caviar. We propose to amend our definition of ''sturgeon caviar'' to clarify that it refers to roe processed for human consumption, the commonly understood meaning of the term, and does not include sturgeon or paddlefish eggs or extracts contained in shampoos, cosmetics, lotions, or other products for topical application. These products

containing sturgeon or paddlefish eggs or extracts are regulated under CITES and must meet the other requirements in part 23, but are not subject to the caviar-labeling requirements in § 23.71. We also propose to remove the reference to ''caviar products'' from § 23.71(g) and add text in § 23.23(c) and (e) stating the need for CITES documents to clearly indicate the scientific name and exact quantity of each species contained in any product because this requirement applies to all products containing CITES species, not just to products containing sturgeon roe. We also propose to provide information on how U.S. exporters and re-exporters may be added to the ''Register of licensed exporters and of processing and repackaging plants for specimens of sturgeon and paddlefish species'' maintained by the CITES Secretariat in accordance with Resolution Conf. 12.7 (Rev. CoP14).

Sport-hunted trophies (§ 23.74): At the time our current regulations were written, the CITES Parties had not defined ''sport-hunted trophy.'' We therefore developed the definition in § 23.74(b) based on our experience with international trade in these items and the commonly understood meaning of the term from the dictionary and other wildlife regulations. (See 72 FR 48402, August 23, 2007, for further background.)

Prior to CoP15, as part of its regular review of resolutions, the Secretariat suggested that the Parties consider developing a definition of ''hunting trophy'' that could be added to a CITES resolution. The United States participated in discussions through an online forum prior to CoP15 and in a working group established at CoP15 to consider a CITES definition of ''hunting trophy.'' At CoP15, the Parties adopted a definition of ''hunting trophy'' in Resolution Conf. 12.3 (Rev. CoP15). The major difference between the definition in our current CITES regulations and the definition adopted by the Parties is that the definition in Resolution Conf. 12.3 (Rev. CoP15) allows manufactured items derived from the hunted animal to be considered part of a ''hunting trophy,'' whereas our definition in 50 CFR part 23 specifically excludes such items. We continue to have concerns about the possible import of fully manufactured products as part of a ''hunting trophy'' when the items were actually purchased at a store or from a taxidermist, for example, and were not made from the sport-hunted trophy animal. Therefore, we propose to incorporate into § 23.74(b) the definition contained in Resolution Conf. 12.3 (Rev. CoP15) with some additional text to clarify the conditions under which we will allow the import into the United States of manufactured items as part of a ''hunting trophy.'' If we ultimately incorporate the CITES definition into our regulations, we will carefully monitor imports of sport-hunted trophies, particularly imports of manufactured items as parts of sport-hunted trophies, to evaluate the impact of this change. If we identify problems with implementation of the new definition that result in increased conservation risks to these species, we will revisit our definition of ''sport-hunted trophy'' and propose revisions as needed.

We propose to move the CITES marking requirements for African elephant trophies and the definition of ''lip mark area'' from the African elephant special rule (50 CFR 17.40(e)) into § 23.74. (See the discussion in the preamble on proposed changes to 50 CFR part 17.) In addition, at CoP15, the Parties adopted a change to the accepted methods for marking of elephant ivory to allow the use of new technologies for permanent marking, including the use of lasers. We propose to incorporate this change and clarify the marking requirements for elephant ivory consistent with Resolution Conf. 10.10 (Rev. CoP15).

In addition, we propose to amend § 23.74(d) to clarify that the requirements in that paragraph apply to sport-hunted trophies from populations for which the Conference of the Parties has established an annual export quota. We propose some new text and rearrangement of existing text in § 23.74(d) and a new paragraph § 23.74(e). Although the marking requirements and numbers of trophies from these populations that may be imported have not changed, for clarity, we have laid out these paragraphs in their entirety.

Trade in vicuña (§ 23.75): We propose to add a new section to the regulations to address the requirements for international trade in specimens of vicuña. Certain populations of vicuña are listed in Appendix II for the exclusive purpose of allowing international trade in wool sheared from live animals, cloth made from that wool, and products made from the cloth or wool. The CITES Parties have adopted specific requirements for labeling of these vicuña products in international trade. These requirements are currently contained in our special rule for threatened vicuña in 50 CFR part 17. We believe it is more appropriate to include these specific CITES requirements in our CITES regulations and therefore we propose to remove them from part 17 and insert them into a new section (§ 23.75) in part 23. (See the discussion in the preamble regarding proposed changes to part 17.) We also propose minor changes to more accurately reflect the labeling requirements contained in the current annotations to the CITES vicuña listings (see the discussion in the preamble regarding changes to the vicuña special rule in part 17).

Roles of the Secretariat and the committees (§ 23.84): At CoP14, the Parties agreed to dissolve the Nomenclature Committee and move its duties and responsibilities to the Animals and Plants Committees. The CoP now appoints a specialist on zoological nomenclature to the Animals Committee and a specialist on botanical nomenclature to the Plants Committee to undertake the work previously performed by the Nomenclature Committee. These individuals are ex officio and non-voting. We propose to incorporate these changes, described in Resolution Conf. 11.1 (Rev. CoP15) and Resolution Conf. 12.11 (Rev. CoP15), into our regulations at § 23.84.

Exempt wildlife and plants (§ 23.92): We propose to revise this section to make a distinction between species or specimens that are always exempt from CITES requirements and those that are exempt if they meet certain conditions.

Required Determinations

Regulatory Planning and Review: The Office of Management and Budget (OMB) has determined that this rule is not significant. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations,

and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved with international trade in CITES specimens would be considered small as defined by the SBA. The declared value for U.S. international trade in CITES wildlife (not including plants) was $819 million in 2000, $428 million in 2001, $345 million in 2002, $394 million in 2003, $1.5 billion in 2004 (including one export of a single panda to China with a declared value of $1 billion), $737 million in 2005, $748 million in 2006, $1.0 billion in 2007, and $846 million in 2008.

This proposed rule would create no substantial fee or paperwork changes in the permitting process. The regulatory changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public. The proposed change from the current annual reporting requirement for registered facilities breeding Appendix-I wildlife to a 5-year renewal requirement would reduce the paperwork burden for these facilities.

This proposed rule would benefit businesses engaged in international trade by providing updated and clearer regulations for the international trade of CITES specimens. We do not expect these benefits to be significant under the Regulatory Flexibility Act. The authority to enforce CITES requirements already exists under the ESA and is carried out by regulations contained in 50 CFR part 23. The requirements that must be met to import, export, and re-export CITES species are based on the text of CITES, which has been in effect in the United States since 1975.

We therefore certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act: This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of $100 million or more. This proposed rule provides the importing and exporting community in the United States with updated and more clearly written regulations implementing CITES. This proposed rule would not have a negative effect on this part of the economy. It would affect all importers, exporters, and re-exporters of CITES specimens equally, and the benefits of having updated guidance on complying with CITES requirements would be evenly spread among all businesses, whether large or small. There is not a disproportionate share of benefits for small or large businesses.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. The proposed rule would result in a small increase in fees for registered operations breeding Appendix-I species due to the requirement for renewal of registrations every 5 years.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule would assist U.S. businesses and individuals traveling abroad in ensuring that they are meeting all current CITES requirements, thereby decreasing the possibility that shipments may be delayed or even seized in another country that has implemented CITES resolutions not yet incorporated into U.S. regulations.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This proposed rule would not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for implementing CITES in the United States, we are responsible for monitoring import and export of CITES wildlife and plants, including their parts, products, and derivatives, and issuing import and export documents under CITES. The structure of the program imposes no unfunded mandates. Therefore, this proposed rule would have no effect on small governments' responsibilities.

b. This proposed rule would not produce a Federal requirement of $100 million or greater in any year and is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required because the proposed rule would not further restrict the import, export, or re-export of CITES specimens. Rather, the proposed rule would update and clarify the regulations for the import, export, and re-export of CITES specimens, which would assist the importing and exporting community in conducting international trade in CITES specimens.

Federalism: These proposed revisions to part 23 do not contain significant Federalism implications. A Federalism Assessment under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: This proposed rule contains a collection of information that we have submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

OMB approved the information collection requirements associated with the initial registration of commercial facilities that breed CITES Appendix-I animals (FWS Form 3–200–65) and assigned OMB Control Number 1018–0093, which expires February 28, 2014. Under our current regulations, once a facility is registered, the registration does not expire. We are proposing to limit the length of time a registration is valid to no more than 5 years. Applicants will use Form 3–200–65, the same form used to request the initial registration, to request renewal of a registration. We will use the information collected through the renewal process to determine if an operation still meets the requirements for registration under CITES.

There are currently 15 U.S. commercial breeding operations registered with the CITES Secretariat, and we have 9 pending applications for registration. For each operation that wishes to renew its registration, the

frequency of response will be at least every 5 years. We estimate that we would have no more than 5 applications for renewal in any given year and that the public burden for this information collection would be 20 hours per response. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the application form.

OMB Control No.: 1018–NEW.

Title: Renewal of Registration for Appendix-I Commercial Breeding Operations (CITES).

Service Form Number(s): 3–200–65.

Description of Respondents: Registered commercial facilities that breed Appendix-I (CITES) animals.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once every 5 years.

Total Annual Number of Responses: 5.

Completion Time per Response: 20 hours.

Total Annual Burden Hours: 100 hours.

Total Annual Non-hour Cost Burden: $250 (application fee of $50 for each renewal).

After we issue final regulations, we will incorporate the new information collection burden for Form 3–200–65 into OMB Control No. 1018–0093.

As part of our continuing efforts to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden associated with this proposed information collection. We specifically invite comments concerning:

(1) Whether or not the collection of information is necessary for the proper performance of our management functions involving CITES, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

If you wish to comment on the information collection requirements of this proposed rule, send your comments directly to OMB (see detailed instructions under the heading Comments on the Information Collection Aspects of this Proposal in the **ADDRESSES** section). Please identify your comments with 1018–AW82. Please provide a copy of your comments to the Service Information Collection Clearance Officer (see detailed instructions under the heading Comments on the Information Collection Aspects of this Proposal in the **ADDRESSES** section).

National Environmental Policy Act (NEPA): This proposed rule has been analyzed under the criteria of the National Environmental Policy Act, the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR part 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This proposed rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement or evaluation is not required. This proposed rule is a regulation that is of an administrative, legal, technical, or procedural nature, and its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA. The FWS has determined that this proposed rule is categorically excluded from further NEPA (42 U.S.C. 4321 *et seq.*) review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures and 43 CFR 46.210(i). No further documentation will be made.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who trade internationally in CITES species.

Energy Supply, Distribution, or Use: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This proposed rule would revise the current regulations in 50 CFR part 23 that implement CITES. The regulations provide procedures to assist individuals and businesses that import, export, and re-export CITES wildlife and plants, and their parts, products, and derivatives, to meet international requirements. This proposed rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Clarity of this regulation: 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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please send us comments by one of the methods listed under the heading General Comments in the **ADDRESSES** section. 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.

Public Comments

We are seeking comments on whether the provisions in this proposed rule allow the affected public to effectively comply with CITES. Except for comments concerning the information collection aspects of this proposed rule, you may submit your comments and materials concerning this proposed rule by one of the methods listed under the heading General Comments in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed under the heading General Comments in the **ADDRESSES** section. For information on submitting comments concerning the information collection aspects of this proposed rule, see the **DATES**, **ADDRESSES**, and Paperwork Reduction Act sections of this proposal.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358–2093.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 23

Animals, Endangered and threatened species, Exports, Fish, Foreign trade, Forest and forest products, Imports, Incorporation by reference, Marine mammals, Plants, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

PART 13—[AMENDED]

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

§ 13.3 [Amended]

2. Section 13.3 is amended by removing the words ''''Endangered Species Convention'' (the Convention on International Trade in Endangered Species of Wild Fauna and Flora)'' from the first sentence and adding in their place the words '' ''Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)''.''

3. Section 13.11 is amended by:

a. Adding the words ''the Service's permits Web page at *http://www.fws.gov/permits/;* and the'' immediately following the colon in the first sentence of subparagraph (b)(3);

b. Removing the words ''Room 700'' from the first sentence of subparagraph (b)(3) and adding in their place the words ''Room 212'';

c. Adding the word ''street'' immediately before the word ''address'' in the last sentence of subparagraph (b)(3); and

d. Adding an entry to the table in subparagraph (d)(4) under the section titled ''Endangered Species Act/CITES/Lacey Act'' immediately following the entry for ''CITES Registration of Commercial Breeding Operations for Appendix-I Wildlife'' to read as set forth below.

§ 13.11 Application procedures.

* * * * *

(d) * * *

(4) * * *

Type of permit	CFR citation	Fee	Amendment fee
* * *	* *	*	*
Endangered Species Act/CITES/Lacey Act			
* * *	* *	*	*
—Renewal of Registration of Commercial Breeding Operations for Appendix-I wildlife.	50 CFR Part 23	50	
* * *	* *	*	*

4. Section 13.12(b) is amended by:

a. Revising the introductory text to read as set forth below;

b. In the table, under the heading ''Threatened wildlife and plant permits:'' removing the entry for ''American alligator—buyer or tanner''; and

c. In the table, removing the final entry, ''Endangered Species Convention permits.''

§ 13.12 General information requirements on applications for permits.

* * * * *

(b) *Additional information required on permit applications.* As stated in paragraph (a)(3) of this section, certain additional information is required on all permit applications. For CITES permit applications, see part 23 of this subchapter. Additional information required on applications for other types of permits may be found by referring to the sections of this subchapter cited in the following table:

* * * * *

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.9 [Amended]

6. Section 17.9(a)(2) is amended by:

a. Removing the words ''Office of'' and adding in their place the words ''Division of''; and

b. Removing the words ''Room 700'' and adding in their place the words ''Room 212''.

§ 17.11 [Amended]

7. In § 17.11(h), the List of Endangered and Threatened Wildlife, the entries for ''Caiman, brown,'' ''Caiman, common,'' and ''Caiman, yacare'' are amended by, in each entry, removing the number ''17.42(g)'' from the column titled ''Special rules'' and adding in its place the number ''17.42(c)''.

§ 17.21 [Amended]

8. Section 17.21(g)(2) is amended by:

a. Removing the words ''Office of'' in the first sentence and adding in their place the words ''Division of''; and

b. Adding the words ''Room 212,'' in the first sentence immediately following the words ''Fairfax Drive,''.

9. Section 17.40 is amended by:

a. Revising subparagraph (b)(1)(i)(B) to read as set forth below;

b. Removing the words ''Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service'' from subparagraphs (b)(1)(i)(C)(3), (b)(1)(i)(D), and (b)(1)(ii) and adding in their place the words ''U.S. Fish and Wildlife Service law enforcement office'';

c. Removing subparagraph (e)(1)(iv);

d. Revising subparagraph (e)(3)(iii)(D) to read as set forth below;

e. Adding the words ''(*Panthera pardus*)'' immediately following the word ''Leopard'' in the heading of paragraph (f);

f. Revising the first sentence of subparagraph (h)(5) to read as set forth below;

g. Revising the heading of paragraph (m) to read as set forth below;

h. Removing the first sentence following the heading of paragraph (m);

i. Revising subparagraphs (m)(1)(ii)and (m)(1)(iii) to read as set forth below;

j. Revising subparagraph (m)(2) to read as set forth below;

k. Removing the words ''an information notice'' from the second sentence of subparagraph (m)(3) and adding in their place the words ''a public bulletin'';

l. Removing subparagraphs (m)(3)(i) and (m)(3)(iv); and

m. Redesignating subparagraphs (m)(3)(ii) and (m)(3)(iii) as subparagraphs (m)(3)(i) and (m)(3)(ii).

§ 17.40 Special rules—mammals.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported by the individual who has taken the bear or his designee within 5 days of occurrence to the Resident Agent in Charge, Office of Law Enforcement, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Suite 301, Billings, MT 59101 (406–247–7355), if occurring in Montana or Wyoming, or the Special Agent in Charge, Office of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 9, Sherwood, OR 97140 (503–521–5300), if occurring in Idaho or Washington, and to appropriate State and Tribal authorities. Grizzly bears taken in self-defense or in defense of others, including the parts of such bears, shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(D) The trophy is legibly marked in accordance with part 23 of this subchapter.

* * * * *

(h) * * *

(5) Any take pursuant to paragraph (h)(4) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 N. Fairfax Drive, LE–3000, Arlington, VA 22203, within 5 days.

* * *

* * * * *

(m) Vicuña (*Vicugna vicugna*).

(1) * * *

(1) * * *

(ii) *Import, export, and re-export.* Except as provided in paragraph (m)(2) of this section, it is unlawful to import, export, or re-export, or present for export or re-export without valid permits as required under parts 17 and 23 of this subchapter, any vicuña or vicuña parts and products. For import of embryos, blood, other tissue samples, or live vicuña, permits required under § 17.32 and part 23 will be issued only for bona fide scientific research contributing to the conservation of the species in the wild.

(iii) *Other activities.* Except as provided in paragraph (m)(2) of this section, it is unlawful to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any vicuña or vicuña parts and products. * * * * *

(2) *What activities involving vicuña are allowed by this rule?* You may import, export, or re-export, or place in interstate or foreign commerce, raw wool sheared from live vicuñas, cloth made from such wool, or manufactured or handicraft products and articles made from or consisting of such wool or cloth without a threatened species permit issued according to § 17.32 only when the following provisions have been met:

(i) The specimens originated from a population listed in CITES Appendix II.

(ii) The provisions in parts 13, 14, and 23 of this subchapter are met, including the specific labeling provisions in part 23.

(iii) *Personal and household effects.* Under the provisions of this special rule, raw wool sheared from live vicuñas, cloth made from such wool, or manufactured or handicraft products and articles made from or consisting of such wool or cloth are not granted the personal or household effects exemption described in part 23 of this subchapter. In addition to the provisions of this paragraph (m)(2), such specimens may only be imported, exported, or re-exported when accompanied by a valid CITES document.

(iv) *Labeling of wool sheared from live vicuñas.* Any shipment of raw wool sheared from live vicuñas must be sealed with a tamper-proof seal and have the following:

(A) An identification tag with a code identifying the country of origin of the raw vicuña wool and the CITES export permit number; and

(B) The vicuña logotype as defined in 50 CFR part 23 and the words ''VICUÑA—COUNTRY OF ORIGIN'', where country of origin is the name of the country from which the raw vicuña wool was first exported.

(v) At the time of import, the country of origin and each country of re-export involved in the trade of a particular shipment have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as a country from which Parties should not accept permits.

* * * * *

10. Section 17.44 is amended by:

a. Revising the heading of paragraph (y) to read as set forth below;

b. Removing the first sentence following the heading of paragraph (y);

c. Revising subparagraph (y)(3)(i)(A) to read as set forth below;

d. Revising subparagraph (y)(3)(ii) to read as set forth below;

e. Removing subparagraph (y)(4)(iii);

f. Redesignating subparagraphs (y)(4)(iv) through (y)(4)(vi) as (y)(4)(iii) through (y)(4)(v);

g. Revising newly redesignated subparagraph (y)(4)(iii) to read as set forth below;

h. Revising the fourth sentence after the heading of subparagraph (y)(5) to read as set forth below;

i. Removing the words ''an information bulletin'' from the first sentence after the heading of subparagraph (y)(6) and adding in their place the words ''a public bulletin''; and

j. Removing the words ''Room 700'' in the NOTE to paragraph (y)(6) and adding in their place the words ''Room 212''.

§ 17.44 Special rules—fishes.

* * * * *

(y) Beluga sturgeon *(Huso huso).*

* * *

(3) * * *

(i) * * *

(A) Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

* * * * *

(ii) *Personal and household effects.* You may import, export, or re-export, or conduct interstate or foreign commerce in beluga sturgeon specimens that qualify as personal or household effects under 50 CFR part 23 without a threatened species permit otherwise required under § 17.32. Trade suspensions or trade restrictions administratively imposed by the Service under paragraphs (y)(6) or (y)(7) of this section may also apply to personal and household effects of beluga sturgeon caviar.

* * * * *

(4) * * *

(iii) *CITES compliance.* Trade in beluga sturgeon specimens must comply

with CITES requirements in 50 CFR part 23. Except as provided in paragraph (y)(3)(ii) of this section, all shipments of beluga sturgeon specimens, including those exempted from threatened species permits under this special rule, must be accompanied by valid CITES documents upon import, export, or re-export. Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

(5) * * * Facilities outside the littoral states wishing to obtain such exemptions must submit a written request to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203, and provide information that shows at a minimum, all of the following: * * *

* * * * *

11. Section 17.62 is amended by:

a. Revising subparagraph (a)(4); and

b. Revising the third sentence of subparagraph (c)(3), and adding a sentence to the end of that paragraph, to read as set forth below.

§ 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.

* * * * *

(a) * * *

(4) When the activity applied for involves a species also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, additional requirements in part 23 of this subchapter must be met.

* * * * *

(c) * * *

(3) * * * If the specimens are of taxa also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, specific information must be entered on the Customs declaration label affixed to the outside of each shipping container or package. See part 23 of this subchapter for requirements for trade in CITES specimens between registered scientific institutions.

* * * * *

12. Section 17.72 is amended by:

a. Revising paragraph (a)(4); and

b. Revising the third sentence of paragraph (c)(3), and adding a sentence to the end of that paragraph, to read as set forth below.

§ 17.72 Permits—general.

* * * * *

(a) * * *

(4) When the activity applied for involves a species also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, additional requirements in part 23 of this subchapter must be met.

* * * * *

(c) * * *

(3) * * * If the specimens are of taxa also regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora, specific information must be entered on the Customs declaration label affixed to the outside of each shipping container or package. See part 23 of this subchapter for requirements for trade in CITES specimens between registered scientific institutions.

* * * * *

PART 23—[AMENDED]

13. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora (March 3, 1973), 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

14. Section 23.2 is amended by:

a. Revising the text in the left-hand column of paragraph (b) to read as set forth below;

b. Redesignating paragraph (d) as paragraph (e); and

c. Adding a new paragraph (d) to read as set forth below.

§ 23.2 How do I decide if these regulations apply to my shipment or me?

* * * * *

Question on proposed activity	Answer and action
* * * * * * *	
(b) Is the wildlife or plant specimen exempted from CITES requirements (see § 23.92 (b))?	* * * * * * *
* * * * * * *	
(d) Is the specimen that you possess or want to enter into intrastate or interstate commerce subject to restrictions on its use after import?	(1) YES. The regulations in this part apply. See § 23.55. (2) NO. Continue to paragraph (e) of this section.
* * * * * * *	

15. Section 23.5 is amended by:

a. Revising the definition of *Bred for noncommercial purposes* by removing the words '', and is conducted between facilities that are involved in a cooperative conservation program'' from the end of the sentence;

b. Removing the entry for *Cooperative conservation program;*

c. Revising the definitions of *Coral (dead), Coral fragments, Coral (live),* and *Coral sand* to read as set forth below;

d. Revising the first sentence, and adding a sentence to the end, of the definition of *Coral rock* to read as set forth below;

e. Adding, in alphabetical order, a definition of *Coral (stony)* to read as set forth below;

f. Revising the definition of *Cultivar* to read as set forth below;

g. Revising the definition of *Introduction from the sea* to read as set forth below; and

h. Adding, in alphabetical order, a definition of *Ranched wildlife* to read as set forth below.

§ 23.5 How are the terms used in these regulations defined?

* * * * *

Coral (dead) means pieces of stony coral that contain no living coral tissue and in which the structure of the corallites (skeletons of the individual polyps) is still intact and the specimens are therefore identifiable to the level of species or genus. See also § 23.23(c)(13).

Coral fragments, including coral gravel and coral rubble, means loose pieces of broken finger-like stony coral between 2 and 30 mm measured in any direction that contain no living coral tissue and are not identifiable to the level of genus (see § 23.92 for exemptions).

Coral (live) means pieces of stony coral that are alive and are therefore identifiable to the level of species or genus. See also § 23.23(c)(13).

Coral rock means hard consolidated material greater than 30 mm measured in any direction that consists of pieces of stony coral that contain no living coral tissue and possibly also cemented sand, coralline algae, or other sedimentary rocks. * * * See also § 23.23(c)(13).

Coral sand means material that consists entirely or in part of finely crushed stony coral no larger than 2 mm measured in any direction that contains no living coral tissue and is not identifiable to the level of genus (see § 23.92 for exemptions).

Coral (stony) means any coral in the orders Helioporacea, Milleporina, Scleractinia, Stolonifera, and Stylasterina.

* * * * *

Cultivar means a horticulturally derived plant variety that: (a) Has been selected for a particular character or combination of characters; (b) is distinct, uniform, and stable in these characters; and (c) when propagated by appropriate means, retains these characters. The cultivar name and description must be formally published in order to be recognized under CITES.

* * * * *

Introduction from the sea means transportation into a country of specimens of any species that were taken in the marine environment not under the jurisdiction of any country, i.e., taken in those marine areas beyond the areas subject to the sovereignty or sovereign rights of a country consistent with international law, as reflected in the United Nations Convention on the Law of the Sea.

* * * * *

Ranched wildlife means specimens of animals reared in a controlled environment that were taken from the wild as eggs or juveniles where they would otherwise have had a very low probability of surviving to adulthood. See also § 23.34.

* * * * *

§ 23.7 [Amended]

16. Section 23.7 is amended by:

a. In paragraph (a) under the Office to contact table heading, removing the words ''Room 700'' and adding in their place the words ''Room 212''; and

b. In paragraph (b) under the Office to contact table heading, removing the words ''Room 750'' and adding in their place the words ''Room 110''.

§ 23.8 [Amended]

17. Section 23.8 is amended by removing the words ''Numbers 1018–0093 and 1018–0137'' from the end of the first sentence and adding in their place the words ''Number 1018–0093''.

18. Section 23.13 is amended by:

a. Redesignating paragraph (d) as paragraph (f);

b. Adding a new paragraph (d) and a new paragraph (e) to read as set forth below; and

c. In the newly redesignated paragraph (f), removing the words ''(a) through (c)'' and adding in their place the words ''(a) through (e)''.

§ 23.13 What is prohibited?

* * * * *

(d) Use any specimen of a species listed in Appendix I, II, or III of CITES for any purpose contrary to what is allowed under § 23.55.

(e) Violate any other provisions of this part.

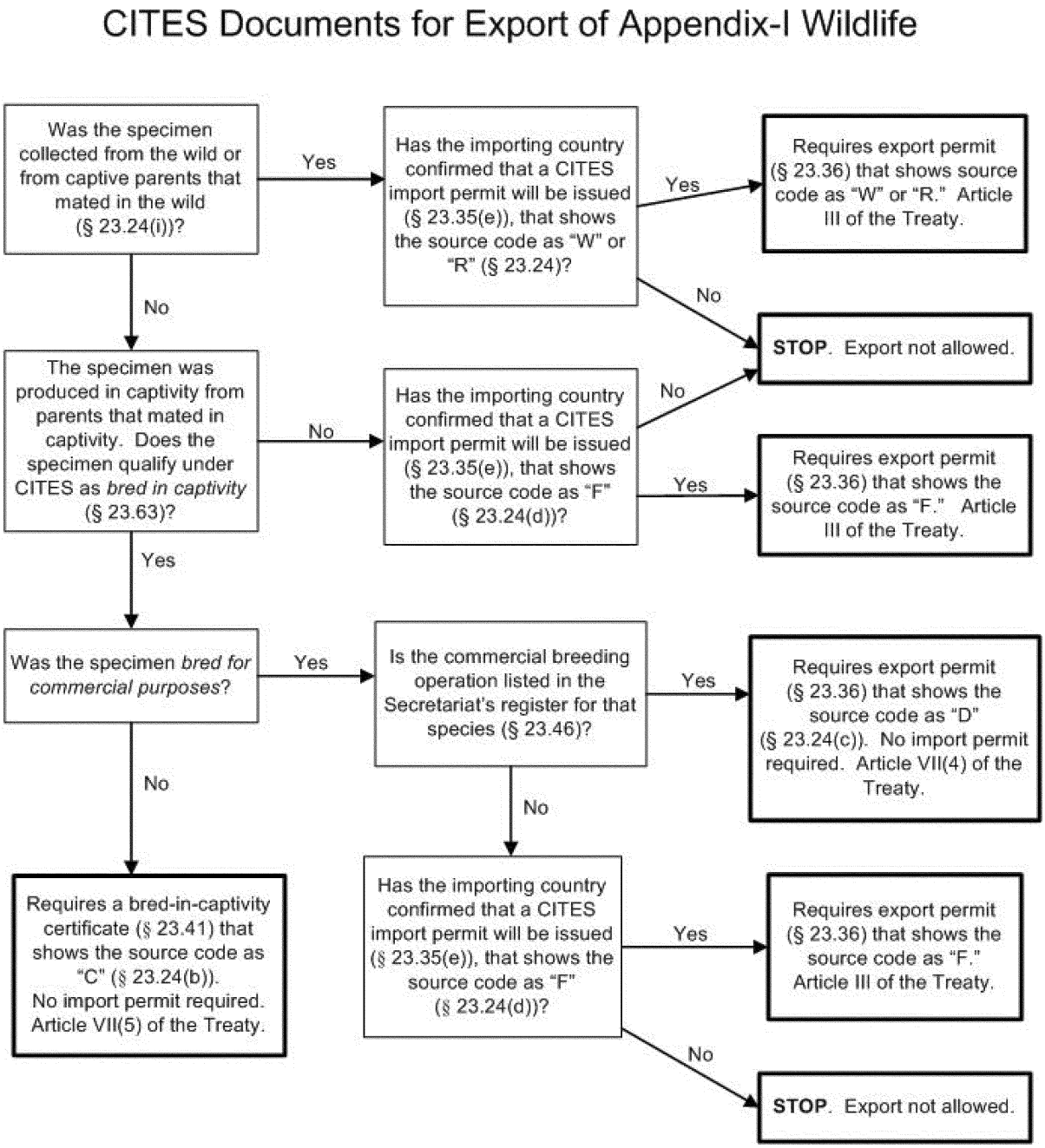
* * * * *

19. Section 23.18 is amended by removing the decision tree and adding in its place the following decision tree.

§ 23.18 What CITES documents are required to export Appendix-I wildlife?

* * * * *

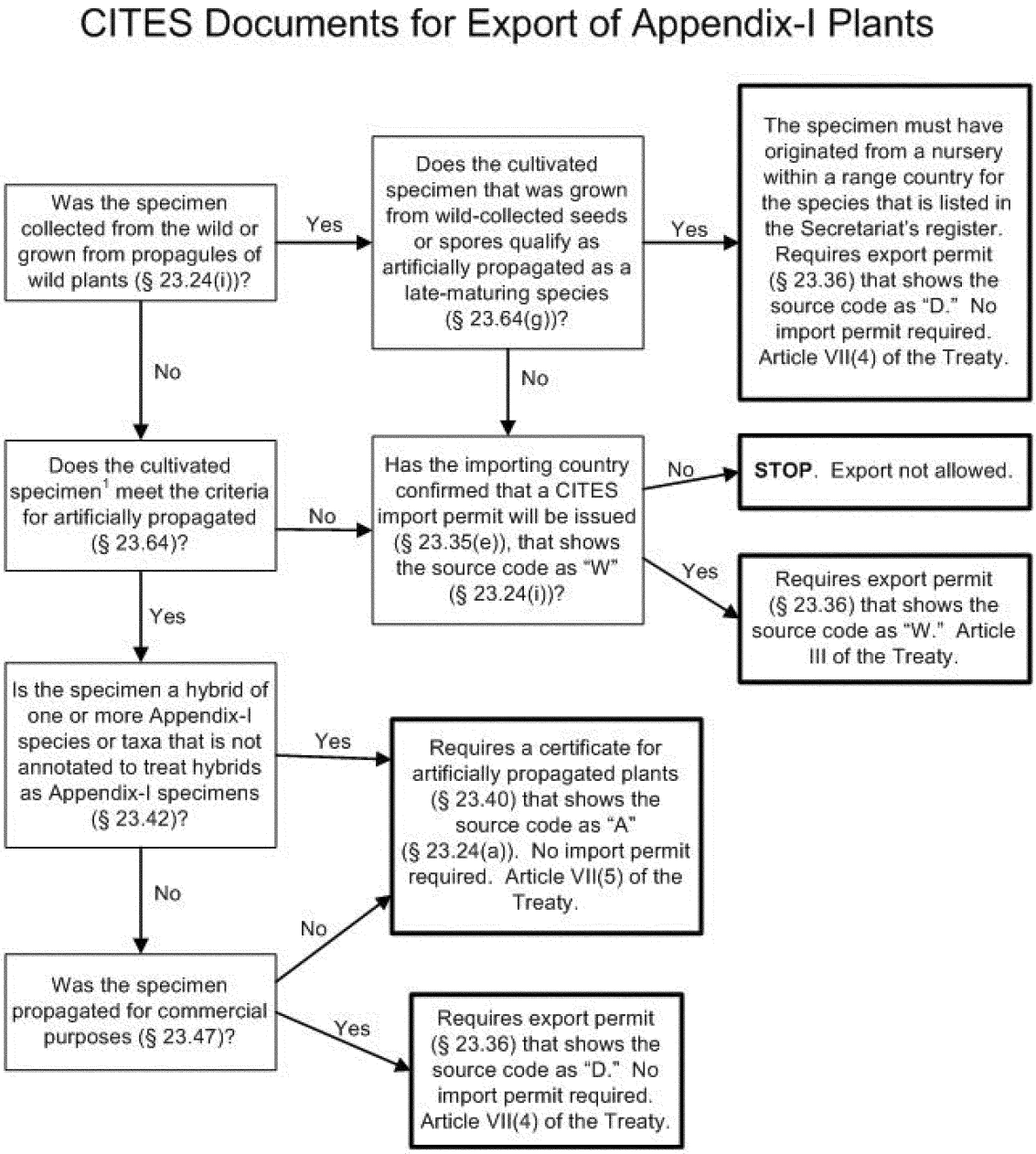
BILLING CODE 4310–55–P



20. Section 23.19 is amended by removing the decision tree and adding in its place the following decision tree.

§ 23.19 What CITES documents are required to export Appendix-I plants?

* * * * *



[1] Cultivated specimens (see §23.5) that do not meet the criteria as artificially propagated are treated as wild.

BILLING CODE 4310–55–C

21. Section 23.23 is amended by:

a. Removing the words ''on a form printed'' in the first sentence of paragraph (b) and adding in their place the word ''issued'';

b. Adding a sentence to the end of subparagraph (c)(1) to read as set forth below;

c. Revising subparagraph (c)(7) to read as set forth below;

d. Removing the first sentence in the right-hand column of subparagraph (c)(12) and adding in its place two sentences to read as set forth below;

e. Removing the first sentence in the right-hand column of subparagraph (c)(13) and adding in its place three sentences to read as set forth below;

f. Redesignating subparagraphs (c)(13)(i)(B) through (c)(13)(i)(C) as (c)(13)(i)(C) through (c)(13)(i)(D);

g. Adding new subparagraph (c)(13)(i)(B) to read as set forth below;

h. Adding the words ''or signature stamp'' immediately following the words ''original handwritten signature'' in the first sentence of subparagraph (c)(16);

i. Adding a sentence immediately following the first sentence in the right-hand column of subparagraph (c)(18) to read as set forth below;

j. Revising the first sentence of subparagraph (c)(21) to read as set forth below;

k. Removing the word ''calendar'' from subparagraph (e)(5)(i);

l. Adding a new subparagraph (e)(10)(iv) to read as set forth below; and

m. Removing the words ''include hybrids'' from subparagraph (f)(2)(ii) and adding in their place the words ''treat hybrids as Appendix-I specimens''.

§ 23.23 What information is required on U.S. and foreign CITES documents?

* * * * *

(c) * * *

Required information	Description
(1) * * *	* * * For products that contain or consist of more than one CITES species, the Appendix in which each species is listed must be indicated on the CITES document.
* *	* * * * *
(7) Humane transport of live specimens	If the CITES document authorizes the export or re-export of live specimens, a statement that the document is valid only if the transport conditions comply with the *International Air Transport Association Live Animals Regulations* (for animals) or the *International Air Transport Association Perishable Cargo Regulations* (for plants). A shipment containing live animals must comply with the requirements of the Live Animals Regulations (LAR) 37th edition, October 1, 2010, by the International Air Transport Association (IATA), Reference Number: 9105–37, ISBN 978–92–9233–373–7. A shipment containing live plants must comply with the requirements for plants in IATA's *Perishable Cargo Regulations* (PCR) 10th edition, July 1, 2010, Reference Number: 9526–10, ISBN 978–92–9233–371–3. The incorporation by reference of these documents was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the LAR and PCR may be obtained from IATA, 800 Place Victoria, P.O. Box 113, Montreal, Quebec, Canada H4Z 1M1, by calling 1–800–716–6326, or ordering through the Internet at *http://www.iata.org.* Copies may be inspected at the U.S. Management Authority, Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 212, Arlington, VA 22203 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*
* *	* * * * *
(12) * * *	The quantity of specimens authorized in the shipment and, if appropriate, the unit of measurement using the metric system. For products that contain or consist of more than one CITES species, the quantity of each species must be indicated on the CITES document.
* *	* * * * *
(13) * * *	The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES. For products that contain or consist of more than one CITES species, the scientific name of each species must be indicated on the CITES document. Scientific names must be in the standard nomenclature as it appears in the CITES Appendices or the references adopted by the CoP. * * * (i) * * * (B) If the species cannot be determined for worked specimens of black coral, specimens may be identified at the genus level. If the genus cannot be determined for worked specimens of black coral, the scientific name to be used is the order Antipatharia. Raw black coral and live black coral must be identified to the level of species.
* *	* * * * *
(18) * * *	* * * For products that contain or consist of more than one CITES species, the source code of each species must be indicated on the CITES document. * * *
* *	* * * * *
(21) * * *	Except as provided for replacement (§ 23.52(f)) or retrospective (§ 23.53(f)) CITES documents, the actual quantity of specimens exported or re-exported: * * *

* * * * *

(e) * * *

Type of document	Additional required information
* *	* * * * *
(10) * * *	* * * (iv) For products that contain or consist of more than one CITES species, the information in (i)–(iii) for each species must be indicated on the CITES document.
* *	* * * * *

§ 23.24 [Amended]

22. Section 23.24 is amended by:

a. Removing the words ''which should be'' in the first sentence of the introductory text and adding in their place the words ''which may be'';

b. Adding the words ''(see § 23.5)'' immediately following the words ''Captive-bred'' in subparagraph (d)(2)(i);

c. Removing subparagraph (d)(2)(iii);

d. Removing the words ''to be used'' in paragraph (f) and adding in their place the words ''may be used''; and

e. Removing the words ''(wildlife that originated from a ranching operation).'' in paragraph (g) and adding in their place the words ''*(see § 23.5).*''

23. Section 23.26 is amended by:

a. Revising the sentence in the right-hand column of subparagraph (c)(8) to read as set forth below;

b. Redesignating subparagraphs (d)(4) through (d)(8) as (d)(5) through (d)(9);

c. Adding new subparagraph (d)(4) to read as set forth below;

d. Redesignating newly designated subparagraphs (d)(7) through (d)(9) as subparagraphs (d)(8) through (d)(10);

e. Adding new subparagraph (d)(7) to read as set forth below; and

f. Adding new subparagraph (d)(11) to read as set forth below.

§ 23.26 When is a U.S. or foreign CITES document valid?

* * * * *

(c) * * *

Key phrase	Conditions for an acceptable CITES document
* *	* * * * *
(8) * * *	Live wildlife or plants were transported in compliance with the *International Air Transport Association Live Animals Regulations* (for animals) or the *International Air Transport Association Perishable Cargo Regulations* (for plants) (See § 23.23(c)(7).)
* *	* * * * *

(d) * * *

(4) The CITES document includes a species for which the Secretariat has published an annotated quota.

* * * * *

(7) We know or have reasonable grounds to believe that an Appendix-I specimen was not bred at a facility registered with the CITES Secretariat and that the purpose of the import is commercial.

* * * * *

(11) The export permit or re-export certificate does not contain validation or certification by an inspecting official at the time of export of the actual quantity exported or re-exported.

24. Section 23.27 is amended by:

a. Adding two sentences to the end of paragraph (a) to read as set forth below; and

b. Adding the words ''exporting or re-exporting'' immediately following the words ''Officials in each'' in the first sentence of paragraph (c).

§ 23.27 What CITES documents do I present at the port?

(a) * * * Article VI, paragraph 6, of the Treaty requires that the Management Authority of the importing country cancel and retain the export permit or re-export certificate and any corresponding import permit presented. In the United States, for imports of CITES-listed plant specimens, CITES inspecting officials cancel and submit original CITES documents to the U.S. Management Authority.

* * * * *

25. Section 23.34 is amended by:

a. Removing the words ''Exempt plant material'' from the left-hand column of subparagraph (b)(3) and adding in their place the words ''Grown from exempt plant material'';

b. Redesignating subparagraphs (b)(6) through (b)(8) as subparagraphs (b)(7) through (b)(9);

c. Adding a new subparagraph (b)(6) to read as set forth below; and

d. Revising the footnote at the end of subparagraph (b) to read as set forth below.

§ 23.34 What kinds of records may I use to show the origin of a specimen when I apply for a U.S. CITES document?

* * * * *

(b) * * *

Source of specimen	Types of records
* *	* * * * *
(6) Ranched wildlife	(i) Records, such as permits, licenses, and tags, that demonstrate that the specimen was legally removed from the wild under relevant Federal, tribal, State, or local wildlife conservation laws or regulations: (A) If taken on private or tribal land, permission of the landowner if required under applicable law. (B) If taken in a national, State, or local park, refuge or other protected area, permission from the applicable agency, if required. (ii) Records that document the rearing of specimens at the facility: (A) Number of specimens (by sex and age- or size-class) at the facility. (B) How long the specimens were reared at the facility. (C) Signed and dated statement by the owner or manager of the facility that the specimens were reared at the facility in a controlled environment. (D) Marking system, if applicable. (E) Photographs or video of the facility.
* *	* * * * *

[1] If the wildlife was born in captivity from an egg collected in the wild or from parents that mated or exchanged genetic material in the wild, see paragraphs (b)(6) and (b)(9). If the plant was propagated from a non-exempt propagule collected from a wild plant, see paragraph (b)(9).

* * * * *

26. Section 23.36 is amended by:

a. Adding, in alphabetical order, two entries to the left-hand column of the table in subparagraph (b)(1) and two corresponding entries to the right-hand column of the table, to read as set forth below;

b. In subparagraph (b)(1) of the table, removing the entry ''Export of Skins/Products of Bobcat, Canada Lynx, River Otter, Brown Bear, Gray Wolf, and American Alligator Taken under an Approved State or Tribal Program'' and adding in its place the entry ''Export of Skins of Bobcat, Canada Lynx, River Otter, Brown Bear, Gray Wolf, and American Alligator Taken under an Approved State or Tribal Program'';

c. In subparagraph (b)(1) of the table, removing the entry ''Trophies by Taxidermists'' and adding in its place the entry ''Trophies by Hunters or Taxidermists''; and

d. In the last entry of subparagraph (b)(1), adding the words ''(Live Animals/Samples/Parts/Products)'' immediately following the words ''Wildlife, Removed from the Wild''.

§ 23.36 What are the requirements for an export permit?

* * * * *

(b) * * *

Type of application for an export permit	Form No.
(1) CITES:	
* * * * * * *	
Caviar/Live Eggs/Meat of Paddlefish or Sturgeon, From an Aquaculture Facility	3–200–80
* * * * * * *	
Master File for the Export of Live Animals Bred-in-Captivity	3–200–85

* * * * *

§ 23.40 [Amended]

27. Section 23.40 is amended by:

a. Removing the words ''include hybrids in the listing'' from subparagraph (d)(2)(iii) and adding in their place the words ''treat hybrids as Appendix-I specimens'';

b. Adding the words ''or spore'' in subparagraph (e)(1) immediately following the words ''from a wild seed'';

c. Removing the words ''include hybrids in the listing'' from subparagraph (e)(2) and adding in their place the words ''treat hybrids as Appendix-I specimens''; and

d. Adding the words ''(See § 23.47.)'' after the last sentence in subparagraph (e)(2).

§ 23.41 [Amended]

28. Section 23.41 is amended by adding the words '', 3–200–80, or 3–200–85'' immediately following the words ''Form 3–200–24'' in paragraph (c).

§ 23.42 [Amended]

29. Section 23.42 is amended by removing the words ''include hybrids'' from paragraph (b) and adding in their place the words ''treat hybrids as Appendix-I specimens''.

30. Section 23.43 is amended by revising subparagraph (f)(2) and adding a new subparagraph (f)(3) to read as set forth below.

§ 23.43 What are the requirements for a wildlife hybrid?

* * * * *

(f) * * *

(2) For import, export, or re-export of an exempt wildlife hybrid without CITES documents, you must provide information at the time of import or export to clearly demonstrate that your specimen has no purebred CITES specimens in the previous four generations of its ancestry. If you are unable to clearly demonstrate this, you must obtain CITES documents. The information you provide must clearly identify the specimen and demonstrate its recent lineage. Such information may include, but is not limited to, the following:

(i) Records that identify the name and address of the breeder and identify the specimen by birth or hatch date and by sex, band number, microchip number, or other mark.

(ii) Certified pedigree issued by an internationally recognized association that contains scientific names of the animals in the specimen's recent lineage and clearly illustrates its genetic history. If the pedigree contains codes, you must provide a key or guide that explains the meaning of the codes.

(3) Although a CITES document is not required for an exempt wildlife hybrid, you must follow the clearance requirements for wildlife in part 14 of this subchapter, including the prior notification requirements for live wildlife.

31. Section 23.44 is amended by revising the section heading and adding a new subparagraph (e)(7) to read as set forth below.

§ 23.44 What are the requirements for traveling internationally with my personally owned live wildlife?

* * * * *

(e) * * *

(7) You must return the wildlife to the United States before the certificate expires.

32. Section 23.46 is amended by:

a. Removing the words ''facilitate a dialogue for resolution of the identified problems within 60 days.'' from the end of the last sentence of subparagraph (b)(3) and adding in their place the words ''allow a further 30 days for resolution of the identified problems.'';

b. Revising subparagraph (b)(4) to read as set forth below;

c. Removing subparagraphs (b)(5) and (b)(6);

d. Redesignating subparagraphs (b)(7) through (b)(12) as subparagraphs (b)(5) through (b)(10);

e. Revising the first sentence of newly redesignated subparagraph (b)(7), and adding a sentence following the first sentence of that subparagraph to read as set forth below;

f. Adding a sentence immediately following the first sentence of newly redesignated subparagraph (b)(8) to read as set forth below;

g. Revising the last sentence of newly redesignated subparagraph (b)(8) by removing the words '', and the Animals Committee will review the operation to determine whether it should remain registered'';

h. Revising newly redesignated subparagraph (b)(10) by removing the words ''bred at a commercial breeding operation that is registered with the CITES Secretariat as provided in this section'' and adding in their place the words ''bred-in-captivity (see § 23.63)'';

i. Removing subparagraph (e)(3);

j. Redesignating subparagraph (e)(4) as subparagraph (e)(3);

k. Adding a new subparagraph (e)(4) to read as set forth below;

l. Redesignating paragraphs (f) through (h) as paragraphs (h) through (j);

m. Adding a new paragraph (f) to read as set forth below;

n. Adding a new paragraph (g) to read as set forth below; and

o. Removing the words ''Form 3–200–24'' from newly designated paragraph (i) and adding in their place the words ''the appropriate form (see § 23.36)''.

§ 23.46 What are the requirements for registering a commercial breeding operation for Appendix-I wildlife and commercially exporting specimens?

* * * * *

(b) * * *

(4) If the objection is not withdrawn or the identified problems are not resolved within the 30-day period, the Secretariat will submit the application to the Standing Committee at its next regular meeting. The Standing Committee will determine whether the objection is justified and decide whether to accept the application.

* * * * *

(7) If a Party believes that a registered operation does not meet the bred-in-captivity requirements, it may, after consultation with the Secretariat and the Party concerned, propose to the Standing Committee that the operation be deleted from the register. At its following meeting, the Standing Committee will consider the concerns raised by the objecting Party, and any comments from the registering Party and the Secretariat, and determine whether the operation should be deleted from the register. * * *

(8) * * * In the United States, we will monitor registered operations, in part, by requiring each operation to apply for renewal and demonstrate that it continues to qualify for registration at least once every 5 years. (See paragraphs (e)(4) and (f) of this section.) * * *

* * * * *

(e) * * *

(4) Registrations will be valid for a period not to exceed 5 years. Registrants who wish to remain registered must request renewal before the end of the period of validity of the registration.

(f) *U.S. application to renew a registration.* Requests for renewal of a registration should be submitted at least 3 months before the registration expires. Complete Form 3–200–65 and submit it to the U.S. Management Authority.

(g) *Criteria for renewal of U.S. registrations.* To renew your registration, you must provide sufficient information for us to find that your proposed activity continues to meet all of the criteria in paragraph (d) of this section.

* * * * *

33. Section 23.47 is amended by adding a sentence to the end of paragraph (a) to read as set forth below.

§ 23.47 What are the requirements for export of an Appendix-I plant artificially propagated for commercial purposes?

(a) * * * This section does not apply to hybrids of one or more Appendix-I species or taxa that are not annotated to treat hybrids as Appendix-I specimens (see § 23.40).

* * * * *

34. Section 23.52 is amended by:

a. Removing the last sentence of paragraph (a) and adding in its place two new sentences to read as set forth below;

b. Adding a new subparagraph (b)(6) to read as set forth below;

c. Revising the introductory text of paragraph (d) to read as set forth below;

d. Redesignating subparagraphs (d)(1) and (d)(2) as (d)(1)(i) and (d)(1)(ii);

e. Adding a new paragraph (d)(1) to read as set forth below;

f. Adding a new subparagraph (d)(1)(iii) to read as set forth below; and

g. Adding a new paragraph (d)(2) to read as set forth below.

§ 23.52 What are the requirements for replacing a lost, damaged, stolen, or accidentally destroyed CITES document?

(a) * * * To renew a U.S. CITES document, see part 13 of this subchapter. To amend a U.S. CITES document, see part 13 of this subchapter if the activity has not yet occurred or, if the activity has already occurred, see § 23.53 of this part.

(b) * * *

(6) In the United States, you may not use an original single-use CITES document issued under a CITES master file or CITES annual program as a replacement document for a shipment that has already left the country.

* * * * *

(d) *Criteria.* The criteria in this paragraph (d) apply to the issuance and acceptance of U.S. and foreign documents.

(1) When applying for a U.S. replacement document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(i) * * *

(ii) * * *

(iii) The specimens were presented to the appropriate official for inspection at the time of import and a request for a replacement CITES document was made at that time.

(2) For acceptance of foreign CITES replacement documents in the United States, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(i) The specimens were presented to the appropriate official for inspection at the time of import and a request for a replacement CITES document was made at that time.

(ii) The importer or the importer's agent submitted a signed, dated, and notarized statement at the time of import that describes the circumstances that resulted in the CITES document being lost, damaged, stolen, or accidentally destroyed.

(iii) The importer or the importer's agent provided a copy of the original lost, stolen, or accidentally destroyed document at the time of import showing that the document met the requirements in §§ 23.23, 23.24, and 23.25.

* * * * *

35. Section 23.53 is amended by:

a. Revising paragraph (a) to read as set forth below;

b. Adding a new subparagraph (b)(8) to read as set forth below;

c. Revising subparagraph (d)(6)(ii) to read as set forth below; and

d. Adding the words ''as defined in § 23.5'' to the end of the sentence in subparagraph (d)(7)(i).

§ 23.53 What are the requirements for obtaining a retrospective CITES document?

(a) Retrospective CITES documents may be issued and accepted in certain limited situations after an export or re-export has occurred, but before the shipment is cleared for import. When specific conditions are met, a retrospective CITES document may be issued to authorize trade that has taken place without a CITES document or to correct certain technical errors in a CITES document after the authorized activity has occurred.

(b) * * *

(8) In the United States, you may not use a U.S. CITES document issued under a CITES master file or CITES annual program as a retrospective CITES document.

* * * * *

(d) * * *

(6) * * *

(ii) The Management Authority unintentionally made a technical error when issuing the CITES document that was not prompted by information provided by the applicant.

* * * * *

36. Section 23.55 is amended by:

a. Revising the introductory text to read as set forth below;

b. Revising the table's headings to read as set forth below;

c. Revising the text in the first block of the right-hand column of the table, which corresponds to paragraphs (a), (b), and (c) in the left-hand column of the table, to read as set forth below;

d. Adding the words ''or Appendix III'' immediately following the words ''Appendix II'' in paragraph (c);

e. Adding the word ''lawful'' immediately before the word ''purpose'' in the first phrase in the second block of the right-hand column of the table, which corresponds to paragraphs (d), (e), and (f) in the left-hand column of the table;

f. Redesignating subparagraph (d)(5) as (d)(6);

g. Adding a new subparagraph (d)(5) to read as set forth below; and

h. Revising paragraph (f) to read as set forth below.

§ 23.55 How may I use a CITES specimen after import into the United States?

In addition to the provisions in § 23.3, you may only use CITES specimens after import into the United States for the following purposes:

If the species is listed in	Allowed use within the United States
(a) * * * ..... (b) * * * (c) * * *	The specimen may be used, including a transfer, donation, or exchange, only for noncommercial purposes. In cases where the species was listed in CITES Appendix I or in Appendix II with an annotation for noncommercial purposes subsequent to the import of your specimen, if you are able to demonstrate (using records or other evidence) that your specimen was imported prior to the Appendix-I or annotated Appendix-II listing, with no restrictions on its use after import, you may continue to use the specimen as indicated in paragraphs (d), (e) and (f) of this section.
* *	* * * * *
(d) * * *. (5) Certificate for artificially propagated plants with a source code of ''A'' for artificially propagated hybrid specimens derived from one or more unannotated Appendix-I species or other taxa. * * *.	
* *	* * * * *
(f) Appendix III, other than those in paragraph (c) of this section.	

37. Section 23.56 is amended by revising subparagraph (a)(2) to read as set forth below.

§ 23.56 What U.S. CITES document conditions do I need to follow?

(a) * * *

(2) For export and re-export of live wildlife and plants, transport conditions must comply with the *International Air Transport Association Live Animals Regulations* (for animals) or the *International Air Transport Association Perishable Cargo Regulations* (for plants) (See § 23.23(c)(7).)

* * * * *

§ 23.64 [Amended]

38. In § 23.64, subparagraph (g)(4)(ii) is amended by adding the words ''or spores'' immediately following the words ''to collect seeds''.

39. Section 23.69 is amended by:

a. Revising the title of the section and the first sentence of paragraph (a) to read as set forth below;

b. Revising the first two sentences of paragraph (c)(3) to read as set forth below;

c. Removing the words ''broken, cut, or missing'' from the first sentence of subparagraph (c)(3)(i) and adding in their place the words ''inadvertently removed, damaged, or lost'';

d. Removing the words ''is broken or cut'' from the third sentence of subparagraph (c)(3)(i) and adding in their place the words ''has been inadvertently removed or damaged'';

e. Removing the word ''missing'' in the fourth sentence of subparagraph (c)(3)(i) and adding in its place the word ''lost'';

f. Adding the words ''or to export products made from fur skins'' immediately following the words ''approved program'' in subparagraph (e)(2); and

g. Adding the words ''or products made from fur skins'' immediately following the words ''To re-export fur skins'' in subparagraph (e)(3).

§ 23.69 How can I trade internationally in fur skins and fur skin products of bobcat, river otter, Canada lynx, gray wolf, and brown bear harvested in the United States?

(a) * * * For purposes of this section, CITES furbearers means bobcat (*Lynx rufus*), river otter (*Lontra canadensis*), Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), and brown bear (*Ursus arctos*) harvested in the United States. * * *

* * * * *

(c) Fur skins without a CITES tag permanently attached may not be exported or re-exported. If the CITES tag has been inadvertently removed, damaged, or lost you may obtain a replacement tag. * * *

* * * * *

40. Section 23.70 is amended by:

a. Adding the word ''tamper-resistant,'' immediately following the word ''Be'' in subparagraph (d)(1)(i);

b. Revising subparagraph (d)(1)(ii) to read as set forth below;

c. Adding the word ''skin'' immediately before the words ''production or harvest'' in subparagraph (d)(1)(iii);

d. Revising paragraph (d)(2) to read as set forth below;

e. Revising the first two sentences of paragraph (d)(3) to read as set forth below;

f. Removing the words ''broken, cut, or missing'' from the first sentence of subparagraph (d)(3)(i) and adding in their place the words ''inadvertently removed, damaged, or lost'';

g. Removing the words ''is broken or cut'' from the fourth sentence of subparagraph (d)(3)(i) and adding in their place the words ''has been inadvertently removed or damaged'';

h. Removing the word ''missing'' in the fifth sentence of subparagraph (d)(3)(i) and adding in its place the word ''lost'';

i. Adding the word ''skin'' immediately before the words ''production or harvest'' in the first sentence of subparagraph (d)(3)(ii);

j. Adding the words ''except for products made from American alligators,'' immediately following the words ''State or tribal program,'' in subparagraph (h)(1);

k. Adding the words ''or to export products made from American alligators,'' immediately following the words ''approved program,'' in subparagraph (h)(2);

l. Redesignating subparagraph (h)(3) as subparagraph (h)(4); and

m. Adding a new subparagraph (h)(3) to read as set forth below.

§ 23.70 How can I trade internationally in American alligator and other crocodilian skins, parts, and products?

* * * * *

(d) * * *

(1) * * *

(ii) Be permanently stamped with the two-letter ISO code for the country of origin, a unique serial number, a standardized species code (available on our Web site; see § 23.7), and for specimens of species from populations that have been transferred from Appendix I to Appendix II for ranching, the year of skin production or harvest. For American alligator, the export tags include the US–CITES logo, an abbreviation for the State or Tribe of harvest, a standard species code (MIS = *Alligator mississippiensis*), the year of skin production or harvest, and a unique serial number.

* * * * *

(2) Skins, flanks, and chalecos must be individually tagged.

* * * * *

(3) Skins without a non-reusable tag permanently attached may not be exported or re-exported. If the tag has been inadvertently removed, damaged, or lost you may obtain a replacement tag. * * *

* * * * *

(h) * * *

(3) To re-export crocodilian specimens, complete Form 3–200–73 and submit it to either FWS Law Enforcement or the U.S. Management Authority.

* * * * *

41. Section 23.71 is amended by:

a. Revising paragraph (a) to read as set forth below;

b. Adding a sentence to the end of subparagraphs (b)(1)(i), (b)(1)(iv), and (b)(1)(v) to read as set forth below;

c. Revising subparagraph (b)(1)(ii) to read as set forth below;

d. Adding a sentence to the end of (b)(2)(iv) to read as set forth below;

e. Revising (b)(3)(iii) to read as set forth below;

f. Removing the words ''and caviar products that consist'' from paragraph (g) and adding in their place the words ''that consists'';

g. Adding the words ''or Form 3–200–80'' immediately following the words ''Form 3–200–76'' in the third sentence of paragraph (h);

h. Removing the words ''to FWS Law Enforcement'' from the end of the last sentence in paragraph (h) and adding in their place the words ''either to FWS Law Enforcement or the U.S. Management Authority''; and

i. Adding new paragraph (i) to read as set forth below.

§ 23.71 How can I trade internationally in sturgeon caviar?

(a) *U.S. and foreign provisions.* For the purposes of this section, *sturgeon caviar* or *caviar* means the processed roe of any species of sturgeon or paddlefish (order Acipenseriformes). It does not include sturgeon or paddlefish eggs contained in shampoos, cosmetics, lotions, or other products for topical application. The import, export, or re-export of sturgeon caviar must meet the requirements of this section and the other requirements of this part. The import, export, or re-export of Acipenseriformes specimens other than caviar must meet the other requirements of this part. See subparts B and C for prohibitions and application procedures.

(b) * * *

(1) * * *

(i) * * * In the United States, the design of the label will be determined by the labeler in accordance with the requirements of this section.

(ii) *Primary container* means any container (tin, jar, pail or other receptacle) in direct contact with the caviar.

* * * * *

(iv) * * * In the United States, this may be done by the person who harvested the roe.

(v) * * * This includes any facility where caviar is removed from the container in which it was received and placed in a different container.

* * * * *

(2) * * *

(iv) * * * This is either the calendar year in which caviar was harvested or, for caviar imported from shared stocks subject to quotas, the quota year in which it was harvested.

* * * * *

(3) * * *

(iii) Lot identification number or, for caviar that is being re-exported, the CITES document number under which it was imported may be used in place of the lot identification number.

* * * * *

(i) *CITES register of exporters and of processing and repackaging plants.* The CITES Secretariat maintains a ''Register of licensed exporters and of processing and repackaging plants for specimens of sturgeon and paddlefish species'' on its Web site. If you hold a current import/export license issued by FWS Law Enforcement and wish to be added to the CITES register, you may submit your contact information and processing or repackaging plant codes to the U.S. Management Authority for submission to the CITES Secretariat.

42. Section 23.74 is amended by:

a. Revising paragraph (b) to read as set forth below;

b. Revising paragraph (d) to read as set forth below; and

c. Adding a new paragraph (e) to read as set forth below.

§ 23.74 How can I trade internationally in personal sport-hunted trophies?

* * * * *

(b) *Sport-hunted trophy* means a whole dead animal or a readily recognizable part or derivative of an animal specifically identified on accompanying CITES documents that meets the following criteria:

(1) Is raw, processed, or manufactured;

(2) Was legally obtained by the hunter through hunting for his or her personal use;

(3) Is being imported, exported, or re-exported by or on behalf of the hunter as part of the transfer from its country of origin ultimately to the hunter's country of usual residence; and

(4) Includes worked, manufactured, or handicraft items made from the sport-hunted animal only when:

(i) Such items are contained in the same shipment as raw or tanned parts of the sport-hunted animal and are for the personal use of the hunter;

(ii) The quantity of such items is no more than could reasonably be expected given the number of animals taken by the hunter as shown on the license or other documentation of the authorized hunt accompanying the shipment; and

(iii) The accompanying CITES documents (export document and, if appropriate, import permit) contain a complete itemization and description of all items included in the shipment.

* * * * *

(d) *Quantity.* The following provisions apply to the issuance and acceptance of U.S. and foreign documents for sport-hunted trophies originating from a population for which the Conference of the Parties has established an export quota. The number of trophies that one hunter may import in any calendar year for the following species is:

(1) No more than two leopard (*Panthera pardus*) trophies.

(2) No more than one markhor (*Capra falconeri*) trophy.

(3) No more than one black rhinoceros (*Diceros bicornis*) trophy.

(e) *Marking or tagging.*

(1) The following provisions apply to the issuance and acceptance of U.S. and foreign documents for sport-hunted trophies originating from a population

for which the Conference of the Parties has established an export quota. Each trophy imported, exported, or re-exported must be marked or tagged in the following manner:

(i) Leopard and markhor: Each raw or tanned skin must have a self-locking tag inserted through the skin and permanently locked in place using the locking mechanism of the tag. The tag must indicate the country of origin, the number of the specimen in relation to the annual quota, and the calendar year in which the specimen was taken in the wild. A mounted sport-hunted trophy must be accompanied by the tag from the skin used to make the mount.

(ii) Black rhinoceros: Parts of the trophy, including, but not limited to, skin, skull, or horns, whether mounted or loose, should be individually marked with reference to the country of origin, species, the number of the specimen in relation to the annual quota, and the year of export.

(iii) Crocodilians: See marking requirements in § 23.70.

(iv) The export permit or re-export certificate or an annex attached to the permit or certificate must contain all the information that is given on the tag.

(2) African elephant (*Loxodonta africana*). The following provisions apply to the issuance and acceptance of U.S. and foreign documents for sport-hunted trophies of African elephant. The trophy ivory must be legibly marked by means of punch-dies, indelible ink, or other form of permanent marking, under a marking and registration system established by the country of origin, with the following formula: The country of origin represented by the corresponding two-letter ISO country code; the last two digits of the year; the serial number for the year in question; and the weight of the ivory in kilograms. The mark must be highlighted with a flash of color and placed on the lip mark area. The lip mark area is the area of a whole African elephant tusk where the tusk emerges from the skull and which is usually denoted by a prominent ring of staining on the tusk in its natural state.

* * * * *

43. Section 23.75 is added to read as set forth below:

§ 23.75 How can I trade internationally in vicuña (Vicugna vicugna)?

(a) *U.S. and foreign general provisions.* The import, export, or re-export of specimens of vicuña must meet the requirements of this section and the other requirements of this part (see subparts B and C for prohibitions and application procedures). Certain populations of vicuña are listed in Appendix II for the exclusive purpose of allowing international trade in wool sheared from live vicuñas, cloth made from such wool, and products manufactured from such wool or cloth. All other specimens of vicuña are deemed to be specimens of species included in Appendix I.

(b) *Vicuña Convention* means the Convenio para la Conservación y Manejo de la Vicuña of which vicuña range countries are signatories.

(c) *Vicuña logotype* means the logotype adopted by the vicuña range countries under the Vicuña Convention.

(d) *Country of origin* for the purposes of the vicuña label means the name of the country where the vicuña wool in the cloth or product originated.

(e) *Wool sheared from live vicuña, cloth from such wool, and products manufactured from such wool or cloth* may be imported from Appendix-II populations only when they meet the labeling requirements in paragraph (f) of this section.

(f) *Labeling requirements.* Except for cloth containing CITES pre-Convention wool of vicuña, you may import, export, or re-export vicuña cloth only when the reverse side of the cloth bears the vicuña logotype and the selvages bear the words ''VICUÑA—COUNTRY OF ORIGIN''. Specimens of other products manufactured from vicuña wool or cloth must bear a label that has the vicuña logotype and the designation ''VICUÑA—COUNTRY OF ORIGIN—ARTESANIA''. Each specimen must bear such a label. For import into the United States of raw wool sheared from live vicuña, see the labeling requirements in 50 CFR 17.40(m).

44. Section 23.84 is amended by:

a. Removing the word ''four'' and adding in its place the word ''three'' in the first sentence of paragraph (b);

b. Removing the words ''assist the Nomenclature Committee in the development and maintenance of'' in subparagraph (b)(2)(i) and adding in their place the words ''develop and maintain'';

c. Adding subparagraph (b)(2)(iii) to read as set forth below; and

d. Removing subparagraph (b)(3).

§ 23.84 What are the roles of the Secretariat and the committees?

* * * * *

(b) * * *

(2) * * *

(iii) The CoP appoints a specialist on zoological nomenclature to the Animals Committee and a specialist on botanical nomenclature to the Plants Committee. These specialists are ex officio and non-voting, and are responsible for developing or identifying standard nomenclature references for wildlife and plant taxa and making recommendations on nomenclature to Parties, the CoP, other committees, working groups, and the Secretariat.

45. Section 23.92 is amended by:

a. Removing the words ''paragraph (b)'' and adding in their place the words ''paragraphs (b) and (c)'' in paragraph (a);

b. Removing the words ''and do not need CITES documents'' from the first sentence of paragraph (b);

c. Revising subparagraph (b)(2) to read as set forth below;

d. Adding the introductory text of a new paragraph (c) and a subparagraph (c)(1) to read as set forth below; and

e. Redesignating subparagraphs (b)(3) through (b)(8) as subparagraphs (c)(2) through (c)(7).

§ 23.92 Are any wildlife or plants, and their parts, products, or derivatives, exempt?

* * * * *

(b) * * *

(2) *Plant hybrids.* Specimens of an Appendix-II or -III plant taxon with an annotation that specifically excludes hybrids.

(c) The following are exempt from CITES document requirements when certain criteria are met.

(1) *Plant hybrids.* Seeds and pollen (including pollinia), cut flowers, and flasked seedlings or tissue cultures of hybrids that qualify as artificially propagated (see § 23.64) and that were produced from one or more Appendix-I species or taxa that are not annotated to treat hybrids as Appendix-I specimens.

* * * * *

Appendix A to 50 CFR Chapter I—[Amended]

46. Remove Appendix A to Chapter I.

Dated: February 1, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–4986 Filed 3–7–12; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Parts 51, 52, 70 and 71

Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 70 and 71

[EPA–HQ–OAR–2009–0517; FRL–9643–8]

RIN 2060–AR10

Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal concerns the third step (Step 3) in the EPA's Tailoring Rule. We are proposing to maintain the applicability thresholds for greenhouse gas (GHG)-emitting sources at the current levels. We are also proposing two streamlining approaches, which will improve the administration of GHG Prevention of Significant Deterioration (PSD) and title V permitting programs. The first proposal addresses the implementation of GHG plantwide applicability limitations (PALs). We propose to allow permitting authorities to issue GHG PALs on either a mass-basis (tpy) or a carbon dioxide equivalent (CO_2e)-basis and to allow PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation. The second proposal would create the regulatory authority for the EPA to issue synthetic minor limitations for GHGs in areas subject to a GHG PSD Federal Implementation Plan (FIP). We also discuss our progress in evaluating the suitability of other streamlining approaches and solicit further comment.

DATES: Comments must be received on or before April 20, 2012.

Public Hearing. One public hearing will be held on March 20, 2012. For additional instructions on the public hearing, go to the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0517, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2009–0517.
- *Fax:* (202) 566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2009–0517, Air and Radiation Docket and Information Center, Mailcode: 2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2009–0517. Such deliveries are only accepted during the Docket Center'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–OAR–2009–0517. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I.C of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

Public Hearing: One public hearing will be held on this proposed rule. The hearing will be held on March 20, 2012, at the DoubleTree Hotel—Crystal City, 300 Army Navy Drive, Arlington, Virginia 22202; phone number (703) 416–4100. The public hearing will convene at 10 a.m. and continue until 7 p.m. (local time) or later, if necessary, depending on the number of speakers wishing to participate. The EPA will make every effort to accommodate all speakers that are registered and arrive before 7 p.m. A lunch break is scheduled from 1 p.m. until 2 p.m. and a thirty minute break is scheduled from 4:30 p.m. until 5 p.m. during the hearing. The EPA Web site for the rulemaking, which includes the proposal and information about the public hearing, can be found at: *www.epa.gov/nsr.*

FOR FURTHER INFORMATION CONTACT: Michael S. Brooks, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–3539; fax number (919) 541–5509; email address: *brooks.michaels@epa.gov.* The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed rules. Persons interested in presenting oral testimony should notify Ms. Long at least 1 day in advance of the public hearing. To register to speak, attend or for information pertaining to the public hearing on this document, contact Ms. Pamela S. Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this **SUPPLEMENTARY**

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I. General Information

A. Executive Summary

1. Purpose of the Regulatory Action

The purpose of this ''Step 3'' rule is to continue the process of phasing in GHG permitting requirements under the PSD and title V programs begun in Steps 1 and 2 of the Tailoring Rule.[1] As a result of actions to regulate GHGs under other Clean Air Act (CAA or ''the Act'') programs, GHGs are required to be addressed under the major source permitting requirements of the Act's PSD and title V programs. The Tailoring Rule is necessary because the statutory definitions that have been used for other air pollutants to determine which sources are ''major sources'' subject to permitting under these programs are based on annual emission rates of 100 or 250 tpy which, if implemented immediately for GHGs, would bring so many sources into the programs as to overwhelm the capabilities of state permitting authorities to issue permits and potentially impede the ability of sources to construct or modify their facilities.

To prevent this outcome, the EPA promulgated the Tailoring Rule to create a higher major source threshold for GHGs. In the Tailoring Rule, we explained that ''[t]hese impacts * * * are so severe that they bring the judicial doctrines of 'absurd results,' 'administrative necessity,' and 'one-step-at-a-time' into the *Chevron* two-step analytical framework for statutes administered by agencies.'' Tailoring Rule, 75 FR at 31517. We further explained that on the basis of this legal interpretation, we would phase-in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply ''at least to the largest sources initially, at least to as many more sources as possible and as promptly as possible over time * * * and at least to a certain point.'' *Id.* In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Steps 1 and 2, and we made commitments for subsequent action.

Under Step 1 of the Tailoring Rule, which began on January 2, 2011, sources above the GHG threshold that are required to obtain a PSD or title V permit anyway due to emissions of other pollutants (referred to as ''anyway'' sources) are required also to address their GHG emissions in the permit. Under Step 2, which became effective on July 1, 2011, sources with

[1] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 31,514 (June 3, 2010) (the Tailoring Rule).

GHG emissions above the Tailoring Rule threshold also are required to obtain a PSD or title V permit, even if they would not be subject to these programs based on emissions of other pollutants.

In the Tailoring Rule, the EPA also committed to this Step 3 rulemaking. For this rulemaking we have evaluated whether it is now possible to lower the GHG major source threshold to bring additional sources into the CAA permitting programs without overwhelming state permitting authorities. In addition, we have continued our identification and evaluation of potential approaches to streamline permitting so as to enable permitting authorities to permit more GHG-emitting sources without undue burden. The specific actions being proposed today are briefly described in the following paragraphs.

2. Summary of Major Provisions

The EPA is proposing to leave the GHG major source thresholds unchanged from the Step 2 level at this time. We have found that the capabilities of the state permitting authorities have not improved to the extent necessary for additional sources to be brought into the system. This proposal is discussed further in section V of this preamble.

We are also proposing to revise the PSD regulations to provide for GHG PALs. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without a PSD permit, provided that emissions to not exceed the PAL level. Such PALs are already available under PSD for other pollutants, and we are proposing to create provisions to allow for GHG PALs as well. We believe that this action will streamline PSD permitting programs by allowing sources and permitting authorities to address GHGs one time for a source and avoid repeated subsequent permitting actions. This action is discussed further in section VI.A of this preamble.

We are proposing regulatory provisions as well to allow for ''synthetic minor'' permits for GHGs under the federal PSD program. Applicability under PSD and title V is triggered when a source ''emits, or has the potential to emit'' a pollutant at a level greater than the major source threshold. Under this system, there are some sources that have the potential to emit a pollutant above the threshold (*e.g.,* if the source were to operate 24 hours per day, 7 days per week), but do not have actual emissions above the threshold, due to physical or operational limitations, and do not plan to ever have emissions that great. The EPA has long allowed for such sources to voluntarily accept enforceable limits on their emissions to keep them below the major source threshold; such sources are referred to as ''synthetic minor'' sources. However, synthetic minor permits are typically issued by states under their minor source NSR programs, and there is no generally applicable federal minor NSR program. To allow for issuance of synthetic minor permits for GHGs in all areas subject to the federal PSD program, we are proposing to add GHG synthetic minor provisions to the federal PSD program. We believe that permitting synthetic minor GHG sources under these provisions will reduce the number of sources subject to PSD and title V, reducing the burden on state permitting authorities and the sources. This action is discussed further in section VI.B of this preamble.

B. Does this action apply to me?

Entities affected by this action include sources in all sectors of the economy, including commercial and residential sources. Entities potentially affected by this action also include states, local permitting authorities and tribal authorities. The majority of categories and entities potentially affected by this action are expected to be in the following groups:

Industry group	NAICS [a]
Agriculture, fishing, and hunting	11
Mining	21
Utilities (electric, natural gas, other systems)	2211, 2212, 2213
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316
Wood product, paper manufacturing	321, 322
Petroleum and coal products manufacturing	32411, 32412, 32419
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259
Rubber product manufacturing	3261, 3262
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369
Furniture and related product manufacturing	3371, 3372, 3379
Miscellaneous manufacturing	3391, 3399
Waste management and remediation	5622, 5629
Hospitals/Nursing and residential care facilities	6221, 6231, 6232, 6233, 6239
Personal and laundry services	8122, 8123
Residential/private households	8141
Non-Residential (Commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted in the regulations and standards section of our New Source Review (NSR) Web site, under Regulations & Standards, at *http://www.epa.gov/nsr.*

D. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI

Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2009–0517.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

E. How can I find information about the public hearing?

Persons interested in presenting oral testimony should contact Ms. Pamela Long, Air Quality Policy Division (C504–01), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–0641 or email *long.pam@epa.gov* at least 1 day in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Long to verify the time, date and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views or arguments concerning these proposed rules.

F. What acronyms, abbreviations and units are used in this preamble?

The following acronyms, abbreviations and units are used in this preamble:

AFUE	Annual Fuel Utilization Efficiency
BACT	Best Available Control Technology
CAA or Act.	Clean Air Act
CFR	Code of Federal Regulations
CH_4	Methane
CO_2	Carbon Dioxide
CO_2e	Carbon Dioxide Equivalent
DOE	U.S. Department of Energy
EPA	U.S. Environmental Protection Agency
ECOS	Environmental Council of the States
FIP	Federal Implementation Plan
FR	Federal Register
GHG	Greenhouse Gas
GP	General Permit
GWP	Global Warming Potential
HFCs	Hydrofluorocarbons
ICR	Information Collection Request
LDVR	Light-Duty Vehicle Rule
N_2O	Nitrous Oxide
NAAQS	National Ambient Air Quality Standard
NACAA	National Association of Clean Air Agencies
NRDC	Natural Resources Defense Council
NSR	New Source Review
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget
PAL	Plantwide Applicability Limitation
PFCs	Perfluorocarbons
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
RFA	Regulatory Flexibility Act
SBA	Small Business Administration
SF_6	Sulfur Hexafluoride
SIP	State Implementation Plan
SNPR	Supplemental Notice of Proposed Rulemaking
TSD	Technical Support Document
tpy	Tons Per Year
UMRA	Unfunded Mandates Reform Act

II. Overview of the Proposed Rule

In the Tailoring Rule, we included an enforceable commitment to propose or solicit comment on what we call Step 3 of the process for phasing in, or tailoring, the applicability thresholds at which GHG emission sources are subject to the CAA PSD and title V permitting requirements. We also stated in that rule that we would lower the Tailoring Rule thresholds only after we determined that the states have had enough time to develop the necessary infrastructure and increase their GHG permitting expertise and capacity to efficiently manage the expected increase in administrative burden, and only after we had the opportunity to expedite GHG permit issuance through streamlining measures. In addition, in the Tailoring Rule, we committed to complete action on the Step 3 rulemaking by July 1, 2012, and to make the Step 3 rule effective on July 1, 2013. In the short period of time since the EPA promulgated the Tailoring Rule, the states and we have made progress in GHG permitting capacity and streamlining in some areas, but not enough to justify lowering the thresholds at this time. As a result, in this rulemaking, we propose to maintain Step 3 of the Tailoring Rule at current levels.

In section III of this proposal, we discuss background information, including the potential numbers of permit actions, amounts of GHG emissions, and administrative costs of permit actions for the sources that are potentially subject to GHG permitting for Step 3.

In section IV, we discuss the available information regarding the impact that GHG permitting is having on permitting authorities. In section V, we discuss our proposal to maintain the current applicability requirements for GHG PSD and title V permitting at the levels established under Steps 1 and 2 of the Tailoring Rule—which are the first two steps in the Tailoring Rule's phase-in program for PSD and title V applicability—which we generally refer to as the 100,000/75,000 levels. Our basis for maintaining the current applicability requirements stems from the Tailoring Rule itself, in which we determined that with the Step 1 and 2 thresholds, permitting authorities would be required to handle a large number of GHG permitting actions that would impose significant administrative burdens on the permitting authorities, and that lowering those thresholds in Step 3 would bring in more permitting actions that in turn would add more burden. Accordingly, we stated we would lower the GHG thresholds only if certain criteria are met. The criteria are: (i) The development of what we call streamlining measures that would make GHG permitting more efficient, (ii) whether permitting authorities had the

time needed to ramp up their resources, and (iii) the ability of sources to meet the requirements of the PSD program and the permitting authorities' ability to issue timely permits.[2] Information currently available indicates that the permitting authorities are not significantly better positioned now to process more GHG permits than they were at the time we promulgated Steps 1 and 2 in the Tailoring Rule. We also note that lowering the thresholds to include the relatively low-emitting sources currently under consideration for Step 3 would result in a very small addition to the amount of GHG emissions subject to permitting requirements while potentially adding thousands of sources to the permitting process. For these reasons, we propose in Step 3 to maintain, and not lower, the current applicability thresholds.

As we committed to do in the Tailoring Rule, we have been exploring a variety of approaches that could be used to streamline PSD and title V permitting for sources of GHGs. In section VI, we discuss streamlining techniques with the potential to make the PSD and title V permitting programs more efficient to administer for GHG-emitting sources, and propose two streamlining techniques. In section VI.A, we propose to add provisions to the PSD regulations at 40 CFR 51.166 and 52.21 to better address PALs for GHGs. More specifically, we propose regulatory changes to implement GHG PALs on either a mass-basis (tpy) or a CO_2e-basis, including for existing sources that are not yet currently major for any regulated NSR pollutants and are not major sources because of their GHG emissions, and we also propose allowing PALs to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. In section VI.B, we propose to add provisions to the PSD regulations at 40 CFR 52.21 to create GHG synthetic minor source permitting authority, in areas subject to a GHG PSD FIP. In doing so, we propose changes to create the regulatory authority for the EPA to issue synthetic minor limitations for GHG emissions to allow sources to restrict emissions below the PSD applicability thresholds. A synthetic minor limit may also allow sources to restrict emissions below the title V permitting applicability threshold on a source-wide basis. We also request comment on whether any states with approved SIPs lack authority to issue GHG synthetic minor limitations.

In the rest of section VI, we discuss our progress in evaluating the suitability of other streamlining options and request further comment, for the purposes of both PSD and title V permitting, on potential-to-emit calculations and the use of general permits; and for PSD permitting, on the use of presumptive best available control technology (BACT).

In section VII, we solicit comment on the full range of topics discussed in this proposal. In addition, we call for additional information from states as to their current and expected air permit budgets as well as their current and expected future levels of permitting based on the current thresholds and the possibility of lower thresholds in the future.

III. Background

This section describes key aspects of the background for this rulemaking. For other background information, such as a description of GHGs and their sources, the regulatory backdrop to the Tailoring Rule, and the EPA's GHG PSD and title V programs, *see* the Tailoring Rule, the related actions that the EPA took shortly before finalizing the Tailoring Rule,[3] and the GHG PSD and title V implementation rules that we call the GHG PSD SIP Call and GHG FIP,[4] as well as the GHG PSD and title V Narrowing Rules.[5] For purposes of this proposal, we assume that the reader is familiar with the above-referenced materials. In the following paragraphs we provide a brief summary of key statutory and regulatory background for the PSD permit and title V programs.

A. Statutory and Regulatory Background for PSD and Title V

Under the CAA, new major stationary sources of certain air pollutants, defined as ''regulated NSR pollutants,'' and major modifications to existing major sources are required to, among other things, obtain a PSD permit prior to construction or major modification. We refer to the set of requirements that determine which sources and modifications are subject to PSD as the ''applicability'' requirements. Once major sources become subject to PSD, these sources must, in order to obtain a PSD permit, meet the various PSD requirements. For example, they must apply BACT, demonstrate compliance with air quality related values and PSD increments, address impacts on special Class I areas (*e.g.,* some national parks and wilderness areas), and assess impacts on soils, vegetation, and visibility. These PSD requirements are the subject of Sections III and IV of this document.

In this section, we discuss how the CAA and relevant EPA regulations describe the PSD applicability requirements. The CAA applies the PSD requirements to any ''major emitting facility'' that constructs (if the facility is new) or undertakes a modification (if the facility is an existing source).[6] The term ''major emitting facility'' is defined as a stationary source that emits, or has a PTE of, at least 100 TPY, if the source is in one of 28 listed source categories, or, if the source is not, then at least 250 TPY, of ''any air pollutant.'' 42 U.S.C. 7479(1). For existing facilities, the CAA adds a definition of modification, which, in general, is any physical or

[2] 75 FR 31559.

[3] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,'' 74 FR 66,496 (December 15, 2009) (the Endangerment and Cause-or-Contribute Findings); ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule,'' 75 FR 25,324 (May 7, 2010) (the Light-duty Vehicle Rule); ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' 75 FR 17,004 (April 2, 2010) (the Timing Decision or the Johnson Memo Reconsideration). In the ''Endangerment Finding,'' which is governed by CAA section 202(a) in December 2009 the Administrator exercised her judgment to conclude that ''six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations.'' The Administrator also found ''that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under CAA section 202(a).'' 74 FR 66496. This Endangerment Finding led directly to promulgation of what we call the ''Light-duty Vehicle Rule'' or the ''LDVR,'' also governed by CAA section 202(a), in which EPA set standards for the emission of greenhouse gases for new motor vehicles built for model years 2012–2016. The Johnson Memo Reconsideration provided EPA's interpretation of a pre-existing definition in its PSD regulations delineating the ''pollutants'' that are taken into account in determining whether a source must obtain a PSD permit and the pollutants each permit must control. Regarding the Vehicle Rule, the Johnson Memo Reconsideration stated that such regulations, when they take effect on January 2, 2011, will, by operation of the applicable CAA requirements, subject GHG-emitting sources to PSD requirements.

[4] ''Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule,'' 75 FR 77,698 (December 13, 2010) (the GHG PSD SIP Call); ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Final Rule,'' 75 FR 82246 (December 30, 2010) (the GHG PSD SIP Call FIP).

[5] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,'' 75 FR 82535 (December 30, 2010) (the PSD Narrowing Rule); ''Action to Ensure Authority to Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule; Final Rule,'' 75 FR 82254 (December 30, 2010) (the Title V Narrowing Rule).

[6] 42 U.S.C. 7475(a), 7479(1).

operational change that ''increases the amount'' of any air pollutant emitted by the source.[7]

The EPA's regulations implement these PSD applicability requirements through use of different terminology, and, in the case of GHGs, with additional limitations. Specifically, the regulations apply the PSD requirements to any major stationary source that begins actual construction[8] (if the source is new) or that undertakes a major modification (if the source is existing).[9] The term major stationary source is defined as a stationary source that emits, or has a PTE of, at least 100 TPY if the source is in one of 28 listed source categories, or, if the source is not, then at least 250 TPY, of regulated NSR pollutants.[10] We refer to these 100- or 250-TPY amounts as the major source limits or thresholds. A major modification is defined as ''any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase [ ] of a regulated NSR pollutant [ ]; and a significant net emissions increase of that pollutant from the major stationary source.''[11] EPA rules specify what amount of emissions increase is ''significant'' for listed regulated NSR pollutants (*e.g.,* 40 TPY for sulfur dioxide, 100 TPY for carbon monoxide), but for any regulated NSR pollutant that is not listed in the regulations, any increase is significant.[12]

A pollutant is a ''regulated NSR pollutant'' if it meets at least one of four requirements, which are, in general, any pollutant for which EPA has promulgated a NAAQS or a new source performance standard (NSPS), certain ozone depleting substances, and ''[a]ny pollutant that otherwise is subject to regulation under the Act.''[13] PSD applies on a regulated-NSR-pollutant-by-regulated-NSR-pollutant basis. The PSD requirements do not apply to regulated NSR pollutants for which the area is designated as nonattainment. Further, some modifications are exempt from PSD review (*e.g.,* routine maintenance, repair and replacement).[14]

Under the CAA, title V applies to a ''major source,'' which is defined to include any stationary source that is a ''major stationary source'' under section 302 of the Act.[15] CAA § 501(2). Under section 302, a ''major stationary source'' is defined as any stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tpy or more of any air pollutant.[16] The title V regulations define a ''major source'' in 40 CFR 70.2.

In the Tailoring Rule, the EPA promulgated, for the first time, a regulatory definition of the term ''subject to regulation'' for purposes of the PSD regulations, and included that term, as defined, in the title V regulations. Under the Tailoring Rule regulations, a pollutant is ''subject to regulation'' if, in general, the pollutant is subject to actual control of the quantity of emissions (as opposed to, for example, being subject only to monitoring requirements). *E.g.,* 40 CFR 51.166(b)(48), 40 CFR 70.2. In addition, the Tailoring Rule also provides a special rule for GHGs, which provides that GHGs become pollutants ''subject to regulation,'' and therefore subject to PSD and title V, if they meet the following two-step phase-in thresholds. Step 1 applies the applicable requirements of PSD, including the BACT requirement to projects that increase net GHG emissions by the applicable threshold (75,000 tpy CO_2e) provided these projects would be subject to PSD anyway by significantly increasing emissions of at least one non-GHG pollutant. Under Step 1, for the title V program, only sources with current title V permits for non-GHG pollutants will have to address GHGs.

Step 2 then expands the program by phasing in additional large sources of GHG emissions that are not already subject to PSD or title V permitting requirements due to non-GHG emissions. In Step 2, PSD and title V requirements will apply to new sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e. For existing sources, Step 2 applies title V requirements to existing sources that emit, or have the potential to emit, 100,000 tpy CO_2e and that are not already subject to title V requirements, and also applies PSD requirements to those sources that emit, or have the potential to emit, 100,000 tpy CO_2e and undertake a modification that increases net emissions by at least 75,000 tpy CO_2e. *See* 75 FR 31516.

In the Tailoring Rule, the EPA explained that ''we selected the 'subject to regulation' mechanism'' as the legal mechanism for establishing the phase-in thresholds because we had received information that states could more expeditiously adopt those thresholds through that mechanism. The EPA added that ''our action in this rulemaking [in establishing the phase-in thresholds] should be interpreted to rely on any of several legal mechanisms to accomplish this result * * * [including] revising the meaning of several terms in the [PSD] definition [provisions].'' 75 FR 31582. In this manner, EPA identified several legal bases within the definitional previsions of the PSD regulations to support the phase-in approach.

B. How does the Tailoring Rule address GHG emissions under PSD and Title V?[17]

In the Tailoring Rule, the EPA explained that the rulemaking was necessary because without it, the CAA PSD preconstruction review permitting program and the title V operating permit program would, under a literal reading of those provisions, apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tpy of GHGs beginning on January 2, 2011. This was the date when the EPA's recently promulgated Light Duty Vehicle Rule (LDVR) took effect, imposing control requirements for the first time on carbon dioxide (CO_2) and other GHGs, thereby making them subject to regulation and triggering the PSD and title V permitting requirements. Therefore, a source owner proposing to construct any new major source that would emit or have the potential to emit at or higher than the 100/250 tpy applicability levels (and which therefore may be referred to as a ''major'' source) or modify any existing major source in a way that would increase GHG emissions, would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin. Similarly, title V would apply to a new or existing GHG source exceeding the 100 tpy applicability threshold in the Act.

In the Tailoring Rule, we further explained that under these circumstances, and in the absence of streamlining methods, state and local permitting authorities would be burdened by the need to issue PSD permits to tens of thousands of small sources (including, for example, many commercial sources and small industrial sources) and to issue title V permits to millions of small sources (including, for example, many residential sources).

[7] 42 U.S.C. 7479(1), 7411(a)(4).

[8] 40 CFR 52.21(b)(11).

[9] 40 CFR 52.21(a)(2).

[10] 40 CFR 52.21(b)(1)(i).

[11] 40 CFR 52.21(b)(2)(i) and the term ''net emissions increase'' as defined at 40 CFR 52.21(b)(3).

[12] 40 CFR 52.21(b)(23)(i)–(ii).

[13] 40 CFR 52.21(b)(50).

[14] 40 CFR 52.21(b)(2)(iii).

[15] CAA § 501(2).

[16] CAA § 302(j).

[17] We include this discussion of the Tailoring Rule for background purposes only. We do not reopen for comment any of the determinations made in the Tailoring Rule or our rationale for them.

These extraordinary numbers of permit applications are orders of magnitude greater than the current inventory of annual applications and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result with the permitting authorities able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, we further explained that ''[t]hese impacts * * * are so severe that they bring the judicial doctrines of 'absurd results,' 'administrative necessity,' and 'one-step-at-a-time' into the *Chevron* two-step analytical framework for statutes administered by agencies.'' Tailoring Rule, 75 FR at 31517. We further explained that on the basis of this legal interpretation, we would phase-in the applicability of PSD and title V to GHG-emitting sources so that those requirements would apply ''at least to the largest sources initially, at least to as many more sources as possible and as promptly as possible over time * * * and at least to a certain point.'' *Id.* In the Tailoring Rule, we went on to promulgate the first two steps of the phase-in program, which we call Steps 1 and 2, and we made commitments for subsequent action.

In the Tailoring Rule, we closely reviewed the numbers of additional permitting actions for GHG-emitting sources, and the resulting administrative burdens, that would occur at various permitting thresholds. For example, we estimated the following permitting burdens associated with the Step 1 and Step 2 thresholds, compared to the administrative burdens of the then-current PSD and title V programs (that is, before applicability to GHG-emitting sources):

Step 1:

- Number of sources subject to PSD and title V permitting: The same as prior to Step 1
- Additional workload hours PSD program: 34,000 at a cost of $3 million
- Additional workload hours title V program: 27,468 at a cost of $1 million

Step 2:

- Number of additional sources subject to PSD permitting: 2 new sources, 915 modified sources
- Additional workload hours PSD program: 310,655 at a cost of $24 million
- Number of additional sources subject to title V permitting: 190 sources for each of the first 3 years
- Additional workload hours title V program: 141,322 at a cost of $7 million

75 FR 31541.

We further estimated that the combined additional PSD and title V permitting burdens after implementation of Steps 1 and 2 would, on an annual basis, mean a 42 percent increase in costs over the then-current PSD and title V program. 75 FR 31540, Table V–1.

C. In the Tailoring Rule, what commitments did the EPA make for Step 3?

In the Tailoring Rule, we noted that ''following implementation of the first phase of PSD and title V applicability to GHG sources, generally at the [proposed] threshold, additional action would be required over time to assure full compliance with the statute.'' 75 FR 31571. Accordingly, we included in the Tailoring Rule an enforceable commitment to issue a notice of proposed rulemaking in which we would propose or solicit comment on a third step of the phase-in, which we call Step 3. We committed to complete Step 3 by July 1, 2012, and to make Step 3 effective by July 1, 2013. We committed to solicit comment on lowering the thresholds, so that more sources would be subject to PSD and title V requirements, 40 CFR 52.22(b)(1), 40 CFR 70.12(b)(1), but we did not commit to either propose or finalize lower thresholds. We further stated that in light of the administrative burdens, we would not, in Step 3, lower the thresholds below the 50,000/50,000 tpy CO_2e levels.

In the Tailoring Rule, we recognized that lowering the thresholds in Step 3, and thereby bringing more sources into PSD and title V permitting, would mean that the permitting authorities would confront even greater administrative burdens. For example, we estimated that lowering the thresholds to the 50,000/50,000 level would increase administrative costs by 40 percent above administrative costs associated with Step 2.[18] Accordingly, we explained that whether we could lower the thresholds in Step 3 depended on (i) whether the EPA could develop streamlining measures, (ii) the time that permitting authorities need to ramp up their resources, and (iii) sources' abilities to meet the requirements of the PSD program and permitting authorities' ability to issue timely permits. 75 FR 31524. We elaborated:

(2) Criteria for Establishing Phase-in Schedule

The specific phase-in schedule under the tailoring approach will depend on several things. The first is our progress in developing streamlining methods that will render the permitting authority workload more manageable by taking some sources off the table (through regulations or guidance interpreting ''potential to emit''), and by allowing for more efficient permit processing (through general permits and presumptive BACT). At the same time, streamlining techniques will lower permitting costs to sources or even eliminate some sources' obligations to obtain permits altogether. The second is the time that permitting authorities need to ramp up their resources in an orderly and efficient manner to manage the additional workload. The third is information we have as to the sources' abilities to meet the requirements of the PSD program and the permitting authorities' ability to process permits in a timely fashion. That information will be based on the real-world experience the permitting authorities will accumulate as they proceed to process permit application for the larger GHG sources.

Thus, under our present approach, we will develop streamlining techniques, we expect the permitting authorities to ramp up resources in response to the additional demands placed upon them in the first two steps, and we will gather real world-information about the GHG permitting process; and based on all that, we will address expanding the PSD program in a step-by-step fashion to include more sources over time. We intend to follow this process to establish * * * the PSD applicability thresholds * * *.

75 FR 31559. With respect to the third criterion, we note that in the Tailoring Rule, we made clear that sources' abilities to meet the requirements of the PSD and title V programs depend at least in part on the ability of the states to develop, as part of the state programs, outreach and educational efforts to facilitate source compliance. Accordingly, for present purposes, we think this component concerning sources may be examined by a review of the states' progress in developing state GHG permitting programs. We also note that permitting authorities' abilities to issue timely GHG permits may be measured by the extent of any permitting backlog, and depend in large part on the permitting authorities' development of expertise. In this rulemaking, we seek information from the states as to their ability to issue timely permits, including data concerning their backlog, but we also are examining, more broadly, the states' progress in developing expertise in GHG permitting.

D. In the Tailoring Rule, what plan did the EPA announce for developing streamlining measures?

In the Tailoring Rule, we announced a plan to explore streamlining techniques that could make the permitting programs more efficient to administer for GHGs, and that therefore

[18] 75 FR 31540 (Table V–1).

could allow expanding those programs to smaller sources. Streamlining techniques to be evaluated include: (1) Defining PTE for various source categories, (2) establishing source category emission limits for presumptive BACT, (3) establishing general permits and permits-by-rule, (4) establishing a process for electronic permitting, and (5) establishing a process for lean techniques for more efficient permitting processes. We believe that these techniques have the potential to streamline the PSD and title V permitting programs for GHGs to ''allow the expeditious expansion of PSD and title V applicability to more GHG-emitting sources while protecting those sources and the permitting authorities from undue expenses.'' 75 FR 31526.

While we intend to move forward and develop streamlining approaches, we also stated in the Tailoring Rule that we did not expect to develop and implement any of these prior to Step 2. We also stated in the rule that several of these streamlining approaches will take several years to develop, requiring separate rulemaking both at the federal level, and then through state and local processes. We, nonetheless, committed to explore a number of possible streamlining actions prior to the Step 3 rulemaking.

In addition, with respect to title V, in the Tailoring Rule we noted that commenters on the proposal for that rule stated that the EPA should apply the title V program only to sources that are subject to applicable requirements, so that sources should not be required to hold ''empty permits'' (*e.g.,* permits issued to a source that is not subject to any applicable requirement for any pollutant). In the Tailoring Rule, we recognized that not requiring sources to hold such ''empty permits'' is a potential means for relieving title V permitting burdens. [75 FR 31566.] We also stated that—

> We need to gather more information concerning the potential number and utility of ''empty permits'' for GHG sources, in light of the fact that the need for requirements in title V permits will vary based on the requirements of each SIP, and the fact that some SIPs contain broadly applicable requirements.

75 FR 31566. We added that in the Step 3 rulemaking, ''we may consider whether to limit title V applicability to GHG sources in order to minimize the number of GHG sources with 'empty' permits.'' Tailoring Rule, 75 FR 31567.

E. In the Tailoring Rule, what commitments did the EPA make for subsequent action?

In addition, in the Tailoring Rule, we established an enforceable commitment that we will (i) complete a study by April 30, 2015, to evaluate the status of PSD and title V permitting for GHG-emitting sources, including progress in developing streamlining techniques; and (ii) complete further rulemaking (which we refer to as Step 4), based on that study by April 30, 2016, to address the permitting of smaller sources. That rulemaking may also consider additional permanent exclusions based on the ''absurd results'' doctrine, where applicable.

In the Tailoring Rule, we also included a provision assuring that no source with emissions or potential to emit below 50,000 tpy CO_2e, and no modification resulting in an increase and a net GHG increases of less than 50,000 tpy CO_2e, would be subject to PSD or title V permitting before April 30, 2016. We included this provision on the basis of our conclusion that the administrative burdens that would accompany permitting sources below the 50,000 tpy threshold would be so great that it would be impossible to administer the permit programs for these sources until at least 2016, even with the streamlining actions that the EPA may be able to develop, and the increases in permitting resources that we reasonably expect the permitting authorities to acquire.

IV. Available Information on GHG Permitting

To support this Step 3 rulemaking, the EPA has gathered additional information on the impact that GHG permitting is having on permitting authorities at the current threshold levels and the potential impact that would result from a reduction in the GHG permitting thresholds to levels as low as 50,000 tpy CO_2e. Section IV.A discusses the actual permitting that has occurred since January 1, 2011. Section IV.B discusses information gathered through preliminary consultations with eight state PSD permitting authorities, as well as, experience garnered from the EPA regional offices that are the PSD permitting authorities for certain states.[19] Section IV.C presents information from an analysis of the number of existing and new sources that would be potentially major sources of GHGs at a range of thresholds between the current level of 100,000 tpy CO_2e and 50,000 tpy CO_2e.

A. GHG Permitting Activity to Date

As of December 1, 2011, the EPA and state permitting authorities had issued 18 PSD permits with GHG requirements. We also estimate that as of that date, the EPA and state permitting authorities had received an additional 50 GHG PSD permit applications. The types of source categories for which permitting authorities have issued GHG permits include: biofuel production, cement plants, electric generating units, lime production facilities, outer continental shelf exploration, pulp and paper mills, and refineries. Eleven states and three EPA regions issued these permits. In most cases, no permitting authority issued a permit for the same source category more than once. We discuss in section V the extent to which these permitting actions have provided information relevant to Step 3.

B. Consultations With States

To obtain additional information on the current status of GHG permitting based on the implementation of Step 1 and Step 2 and the potential impact of reducing the GHG thresholds in Step 3, we consulted with eight state permitting authorities—Iowa, Louisiana, Michigan, New Jersey, North Carolina, Pennsylvania, South Dakota and Utah—all of which have experience with GHG permitting, and which represent a cross-section of state programs geographically and in terms of population and types of sources. In addition, we reviewed the experience of the EPA regional offices that act as PSD permitting authorities in state jurisdictions: Region 4, which issues PSD permits for GHG emissions in Florida and for all regulated pollutant emissions from outer continental shelf sources in the eastern portion of the Gulf of Mexico; Region 6, which issues PSD permits for GHG emissions in Arkansas and Texas; and Region 9, which issues PSD permits for all regulated pollutants in many of the local air quality management districts in California. For additional information concerning responses to the survey, please refer to the Docket ID No. EPA–HQ–OAR–2009–0517.

These states and regional offices confirm that they have not yet experienced the increase in the number of major source permitting actions that was predicted to result from the implementation of Step 1 and Step 2. They generally do not believe that 2011 has been representative of the permitting burdens that they expect will

[19] In the title V program, the responsible permitting agency is referred to as the ''permitting authority,'' while in the PSD program, this entity is referred to as the ''reviewing authority.'' We use the two terms interchangeably in this preamble.

ultimately occur under the current Tailoring Rule.

In addition, the states confirmed that to this point, they have not been able to build up their GHG permitting infrastructure. For example the permitting activity to date has provided limited, if any, opportunity to build internal capacity to handle GHG permitting for a diverse set of sources or more efficiency for any particular source category. Similarly, the lack of permitting experience greatly diminished the opportunity to develop meaningful streamlining approaches to address GHG permitting. As a result, states indicated that they have made little or no progress in implementing streamlining measures, and have not adopted any such measures specifically to address GHGs.

C. Additional Technical Support for the Step 3 Rule

To support the decision-making process for this Step 3 rule, the EPA carried out an analysis to estimate the number of facilities that would exceed different GHG emissions threshold levels.[20] This analysis built upon analysis the EPA included in the Tailoring Rule to support the threshold decisions in that action.[21] In the Tailoring Rule analysis, the EPA evaluated eight different PTE thresholds between 100 and 100,000 tpy CO_2e, including 50,000 tons per year. For this Step 3 analysis, the EPA evaluated nine additional thresholds between 50,000 and 100,000 tpy CO_2e in 5,000 tpy increments (that is, 55,000 through 95,000 tpy CO_2e). The EPA considered stationary sources in the following sectors:

- Electricity Generation (facilities with fossil fuel-fired electric generating units);
- Industrial sources (14 subcategories of industries with process and combustion GHG emissions);
- Energy (oil and gas extraction, transport, and processing; underground coal mining);
- Waste Treatment (landfills and municipal solid waste incinerators);
- Agriculture (stationary fuel combustion);
- Commercial (stationary fuel combustion); and
- Residential (stationary fuel combustion).

For each sector, the analysis estimated the number of sources that would become major sources for GHGs at each of the different threshold levels and the number of new major sources projected to be added each year. The study found that at a Step 3 major source threshold of 50,000 tpy CO_2e, approximately 4,650 additional sources would become major sources of GHGs (increasing from 5,326 at 100,000 tpy CO_2e, to 9,980 at 50,000 tpy). About half of these would be in the ''unspecified industrial stationary combustion'' subcategory of industrial facilities; 16 percent in the waste treatment sector, landfill subcategory; 14 percent in the energy sector, oil and gas subcategory; 12 percent in the commercial/stationary fuel combustion sector; 4 percent in the electricity generation sector and the remaining 4 percent scattered among the remaining sectors and industrial subcategories. At a threshold of 80,000 tpy CO_2e the number of commercial sources that become major sources of GHGs significantly increases (compared to 100,000 tpy CO_2e) and at a threshold of 55,000 tpy CO_2e, some multi-family residential sources become major sources. The analysis found that no sources in the agricultural or single family residential categories would become major sources of GHGs at a threshold of 50,000 tpy CO_2e. Note that this analysis did not differentiate between sources that become major only because of the source's GHGs emissions from sources that are already major for one or more other pollutants.

The EPA's analysis identified sources that would become subject to permitting requirements because of GHG emissions alone.[22] Based on this analysis, we estimate that a reduction from the current Step 2 threshold to 50,000 tpy CO_2e would result in nearly 3,000 sources becoming major sources due to their GHG emissions alone (increasing from 552 sources at 100,000 tpy CO_2e, to 3,539 at 50,000 tpy). In addition, we estimate that 1,014 additional modifications would be subject to PSD permitting based on GHG emissions at 50,000/50,000 tpy CO_2e versus the Step 2 thresholds of 100,000/75,000 (increasing from 917 per year to 1,931).

In addition to determining the amount of potential additional permit actions associated with the various thresholds, the EPA also determined the administrative burdens associated with those actions. To do so, the EPA relied on the same per-permit administrative cost figures used in the Tailoring Rule for both PSD and title V permitting, for both commercial/residential sources and industrial sources, as well as for both new construction and modifications.[23] The EPA also determined the amount of GHG stationary source emissions associated with the sources potentially affected by the various thresholds.

To determine the impacts of lowering the thresholds in Step 3, the EPA compared the amounts of administrative costs and GHG inventory covered at the various cut-points to the amounts at the 100,000/75,000 Step 2 levels.[24] For example, with respect to the PSD administrative costs, as we stated in the Tailoring Rule, 75 FR 31540 (Table V–1), at the 100,000/75,000 Step 2 levels, we expect annual PSD permitting actions for GHG-emitting sources to include 242 newly constructed sources and 1,365 modifications (917 for GHG emissions alone plus 448 for anyway sources) and we expect that these PSD GHG permitting actions would increase permitting authority administrative burdens by 42 percent above existing total air permitting burdens (including permitting for conventional (*i.e.,* non-GHG pollutants under Tailoring Rule Step 1), because these actions would trigger permitting requirements for both PSD and title V. In total, we estimate the facilities meeting the Step 2 major source applicability thresholds account for approximately 67 percent of the total national stationary source GHG emissions. At the 50,000/50,000 levels, the EPA estimates annual PSD permitting actions involving GHG-emitting sources to include 243 newly constructed sources and 2,379 modifications (1 more newly constructed source and 1,014 more modifications than at the 100,000/75,000 level). While the EPA estimates these GHG permitting actions to increase permitting authority administrative burdens by 40 percent above the total burdens at Step 2 levels (and 99% above the administrative burdens without GHG permitting), we estimate the facilities meeting these major source applicability thresholds to account for approximately 70 percent of

[20] *See* Technical Support Document ''Summary of Methodology and Data Used to Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds'' (December 2011).

[21] *See* ''Technical Support Document for Greenhouse Gas Emissions Thresholds Evaluation,'' March 29, 2010, Docket No. EPA–HQ–OAR–2009–0517–19158.

[22] *See* ''Summary of Methodology and Data Used to Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds,'' December 2011.

[23] We note that none of the challenges to the Tailoring Rule have addressed these burden estimates; we have not revisited them for purposes of this rule, nor are we are re-opening them for comment.

[24] This level refers to new sources as well as existing sources that are not ''anyway'' sources and that emit, or have the potential to emit, at least 100,000 tpy CO_2e, as well as existing sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net emissions of GHGs by at least 75,000 tpy CO_2e.

total national stationary source GHG emissions, just three percent more than currently covered under Step 2. For a more complete description of the EPA's analysis and an explanation, *see* the Technical Support Document titled, ''Summary of Methodology and Data Used to Evaluate Resource Requirements at Alternative Greenhouse Gas (GHG) Permitting Thresholds'' (December 2011).

V. Proposed Step 3 Rule

A. Overview

The Tailoring Rule's phase-in approach is based on data concerning the numbers of GHG permitting actions the permitting authorities would have to undertake and the costs of those actions—both absolute and in comparison to their current budgets—at various different thresholds for the applicability of PSD and title V to GHG-emitting sources. In the Tailoring Rule, we began the phase-in by establishing Steps 1 and 2, which applied PSD and title V to ''anyway'' sources [25] and sources emitting GHGs at the 100,000/75,000 tpy CO_2e level. To do so, we determined that permitting authorities could handle the hundreds of additional permitting actions that would occur under Steps 1 and 2, even though the authorities' administrative costs would increase by 42 percent over their then-current administrative costs for both PSD and title V programs.

The present rulemaking represents the fulfillment of our commitment in the Tailoring Rule to undertake Step 3 of the GHG PSD and title V phase-in process. At this time, because of the limited amount of new construction and modifications that sources have undertaken in the past year, we believe state permitting authorities have not had sufficient time and opportunity to develop the necessary infrastructure and increase their GHG permitting expertise and capacity, which makes it administratively infeasible to apply PSD and title V permitting requirements to additional sources. Accordingly, we are proposing to leave the applicability thresholds for GHGs unchanged.

In the Tailoring Rule, we committed to undertake future rulemaking, including this Step 3 rulemaking, to examine whether we could lower the thresholds to, potentially, as low as 50,000/50,000, and thereby apply PSD and title V to more sources. We recognized that lowering the thresholds would add more administrative costs on top of those added by Steps 1 and 2, and as a result, we stated that whether and when we would lower the thresholds would depend on the pace at which the EPA and permitting authorities could develop streamlining measures to expedite permit program administration and permitting authorities could hire and train staff, as well as gain experience with GHG permitting. Specifically, we indicated that further phase-in of GHG applicability would depend on three criteria: (i) Whether the EPA could develop streamlining measures, (ii) the time that permitting authorities need to ramp up their resources, and (iii) sources' abilities to meet the requirements of the PSD program and permitting authorities' abilities to issue timely permits.

As described in the following, the states and the EPA have made some progress in these areas. For example, the states have issued some GHG permits and we are proposing streamlining measures in this rulemaking. However, neither the states nor the EPA have had the opportunity to make significant progress in these areas. First, the states have had only limited experience in GHG permitting and therefore have not had the opportunity to develop significant expertise. The main reasons for this are the unexpectedly low number of PSD permit applications submitted to date and the short amount of time since GHG permitting began. As the volume of PSD permit applications increases, EPA expects that more permitting authorities will further develop the necessary specialized expertise required for case-by-case review of GHG permit applications, including the establishment of a robust GHG BACT record. Second, the states have not been able to develop their GHG permitting infrastructure—*e.g.,* hiring additional personnel, establishing policies and conducting outreach programs to sources unfamiliar with the permitting process—largely because their permitting resources have not increased and, in fact, in some cases have decreased and may decrease further in the near future. Similarly, for title V, applications for title V permits are not generally due until a year after title V becomes applicable to a source. Thus, for Step 2 title V sources, permit applications are generally not due until July 1, 2012, and states have not gained title V permitting experience. Third, we have not had the opportunity to develop significant streamlining approaches, largely because, as we stated in the Tailoring Rule, certain streamlining approaches require a longer process. Because of these reasons and following the criteria, described in the Tailoring Rule, we are establishing Step 3 at the current levels.

The following discusses these criteria, beginning with the ability of states to ramp up and build infrastructure, and notes the states' and our experience with GHG permitting to date under the current Step 1 and Step 2 applicability thresholds. We also address the additional two criteria noted above and the environmental benefits potentially associated with any further reduction in the GHG PSD permitting thresholds.

B. Have states had adequate time to ramp up their resources?

A criterion that we described in the Tailoring Rule for whether to lower the thresholds in Step 3 was whether the permitting authorities could increase their resources. As discussed previously in the background section, we stated in the Tailoring Rule that we expected Steps 1 and 2 to result in an increase in PSD permits for new construction and modifications and in title V permits. We estimated that Steps 1 and 2 would result in a 42 percent increase in administrative burdens for permitting authorities. We expected that some increase in state permitting resources would be needed to accommodate, at least in part, those new demands.

As noted, to this point states have not been confronted with the amount of GHG permit applications that we had expected in the Tailoring Rule for Steps 1 and 2. EPA estimates that the unexpected small number of permit applications to this point reflect the economic downturn, which has depressed new construction and modifications. The number of permit applications in a given year is based on individual business decisions which we believe are directly linked to the economic situation. The Agency expects that this situation will be short-lived, and that the pace of permitting will pick up as economic conditions improve and as GHG permitting becomes better established. Thus, it is prudent for states to continue to plan on confronting additional administrative demands expected as part of Steps 1 and 2. As discussed in the following, they have confronted other administrative burdens as well and if the thresholds are lowered in Step 3, they will confront still more administrative burdens. Importantly, based on our consultations with a limited number of states, we do not believe that states have had the opportunity to obtain the necessary

[25] We refer to these sources as ''anyway'' sources because they will become subject to PSD for their GHG emissions if they undergo PSD permitting anyway, either for new construction or for modification projects, based on emissions of non-GHG pollutants; and, by the same token, the will become subject to title V for their GHG emissions if they are subject to title V anyway due to their non-GHG emissions.

resources and to develop their infrastructure to accommodate the level of permitting expected in Steps 1 and 2.

In addition, an August 2011 report by the Environmental Council of the States (ECOS) [26] emphasizes the continued need for additional resources before full implementation of the program can begin. It also notes that permitting authorities expect workloads to double or triple as a result of applications for synthetic minor limits to sources who wish to avoid GHG permitting.

Further, as quantified in the Tailoring Rule, lowering the thresholds would increase those burdens. We have estimated that lowering the thresholds to 60,000/60,000 would increase administrative burdens by 20 percent above the total burdens at Step 2 levels (and 40 percent above the pre-GHG permitting burdens). As noted above, lowering them to 50,000/50,000 would increase administrative burdens by 40 percent above the total burdens at Step 2 levels (and 99 percent above the pre-GHG permitting burdens). As we discussed in the Tailoring Rule, lowering applicability thresholds would trigger requirements for more sources that never before have been regulated under the PSD and title V permitting programs. As a result, permitting agencies will need to conduct an education and outreach program to raise awareness and understanding of the regulatory requirements for these smaller sources. Absent this outreach effort, we believe that many sources will not understand, and perhaps may not even be aware of, their new regulatory obligations.

Finally, we note that certain procedural aspects of the GHG permitting process have proved to be more resource- and time-intensive for states than anticipated at the time of the Tailoring Rule. In the final Tailoring Rule, we finalized the applicability thresholds within the definition of ''subject to regulation,'' instead of within the ''major stationary source'' definition. We made this change in regulatory approach because we received information indicating that many states could adopt the applicable thresholds through a regulatory interpretation of the term ''subject to regulation,'' instead of a SIP revision.[27] Since finalizing the Tailoring Rule, we discovered that in fact, very few states were able to adopt the applicable thresholds by interpretation alone, and instead needed SIP revisions to be able to regulate GHGs under their approved PSD programs at the levels of the final Tailoring Rule. Moreover, some states were obliged to invoke emergency procedures to expedite revision of their state laws. This unexpected, additional state process required for adopting the Tailoring Rule thresholds may have delayed some states in developing their permitting program infrastructure.

By the same token, for title V programs, we believed that many states could adopt the Tailoring Rule thresholds through a regulatory interpretation of the term ''subject to regulation,'' and that this approach would allow permitting authorities to implement title V for GHGs quickly with little rulemaking burden. However, as it has happened, most states need to change the state laws and/or regulations governing their title V programs to be able to permit GHGs at the Tailoring Rule threshold levels. In fact, it turned out that only 5 state programs and numerous local districts in California, did not need to enact program revisions.

In the Tailoring Rule, we expected that over time, permitting authorities would have the opportunity to increase their resources to allow them to process more GHG permit applications in a timely fashion. To this point, we see little evidence that permitting authorities could increase resources and, in fact, permitting authorities generally are facing fewer resources. Reductions in state environmental agency budgets are fully consistent with the overall reductions in state budgets recently seen in the United States.

The August 2010 ECOS report, noted previously,[28] concluded that state budgets decreased by an average of approximately $21 million per state from 2009 to 2011. On June 28, 2011, the National Association of Clean Air Agencies (NACAA) sent a letter to the U.S. House of Representatives detailing the status of 40 state and local air quality agencies.[29] The NACAA letter indicates that 80 percent of air agencies experienced a decline in staffing levels in the last 4 years. Over the years 2008–2010, the average loss of staff per agency was 16.7 percent. In addition to staffing losses, 48 percent of air agencies experienced furloughs, and the majority faced significant declines in budgets. These cutbacks resulted in curtailing core air program activities including permit issuance, and education and outreach programs. In our recent consultations with states most confirmed that they have seen their budgets and staffs reduced in recent years as the states have responded to the economic downturn and budget shortfalls. For the previously described reasons, states have not had the opportunity to build capacity and resources to handle GHG permitting. Accordingly, this criterion of state resources supports maintaining the current thresholds.

C. What is the ability of permitting authorities to issue timely permits?

The second criterion we address is whether permitting authorities have the ability to issue timely permits based on efficiencies resulting from GHG permitting implementation experience.[30] In describing this criterion in the Tailoring Rule, we expected that permitting authorities, by acting on the anticipated volume of GHG PSD permit actions, would have the opportunity to establish efficient methods for resolving issues and processing permits, including developing expertise within their staff. This would allow them to achieve efficiencies that, in turn, would create capacity for processing more GHG permit applications. Thus, with this criterion, we based our commitment to complete the Step 3 rulemaking in part on the assumption that Steps 1 and 2 would provide us with the necessary information to determine whether and when it has become possible for states to administer GHG permitting programs for additional sources. This has not yet happened.

While we recognize that we have not yet completed a full year of implementation for Steps 1 and 2, GHG permit applications are fewer than we had expected. As of December 1, 2011, the EPA and state permitting authorities have issued only 18 GHG PSD permits. As noted, these 18 permit actions have been spread among 11 states and the EPA. Almost all of the states have issued only one GHG permit, and only Michigan has issued as many as three

[26] S. Brown, A. Fishman, ''The Status of State Environmental Agency Budgets, 2009–2011,'' Steven Brown, Executive Director, and Adam Fishman, Intern.

[27] As discussed in the preamble to the final Tailoring Rule (75 FR 31581), we participated in teleconferences with 1 local and 6 state agency permitting authorities on this topic, and they generally agreed that this approach would better facilitate state incorporation of the limitations in the final rule. We therefore concluded that it was likely that the state rules were sufficiently open-ended to apply EPA's approach by interpretation (although some states might elect to pursue rulemaking in addition to or instead of interpretation).

[28] ''The Status of State Environmental Agency Budgets, 2009–2011,'' p. 3.

[29] S. William Becker to Honorable Michael Simpson, Chairman Subcommittee on Interior, Environment, and Related Agencies, and Honorable James Moran Ranking Member, Subcommittee on Interior, Environment, and Related Agencies.

[30] As noted above, this criterion may be measured by the period of time permitting authorities need to issue permits, and it also encompasses the sources' ability to meet GHG permitting requirements.

permits. This activity has simply been too limited to allow States to build internal capacity to handle GHG permitting for a diverse set of sources, to develop more efficient techniques for permitting any particular source category, or to develop streamlining approaches to address GHG permitting. In our consultations with the states, some have confirmed that they have not been able to build up their GHG permitting infrastructure. However, they generally have added that they do not believe that 2011 has been representative of the permitting burdens that they expect will ultimately occur under the current Tailoring Rule. In sum, the states' experiences to date do not provide a basis for us to conclude that permitting authorities in fact have the ability to issue timely permits based on GHG permitting experience thus far.

D. Has the EPA developed streamlining methods?

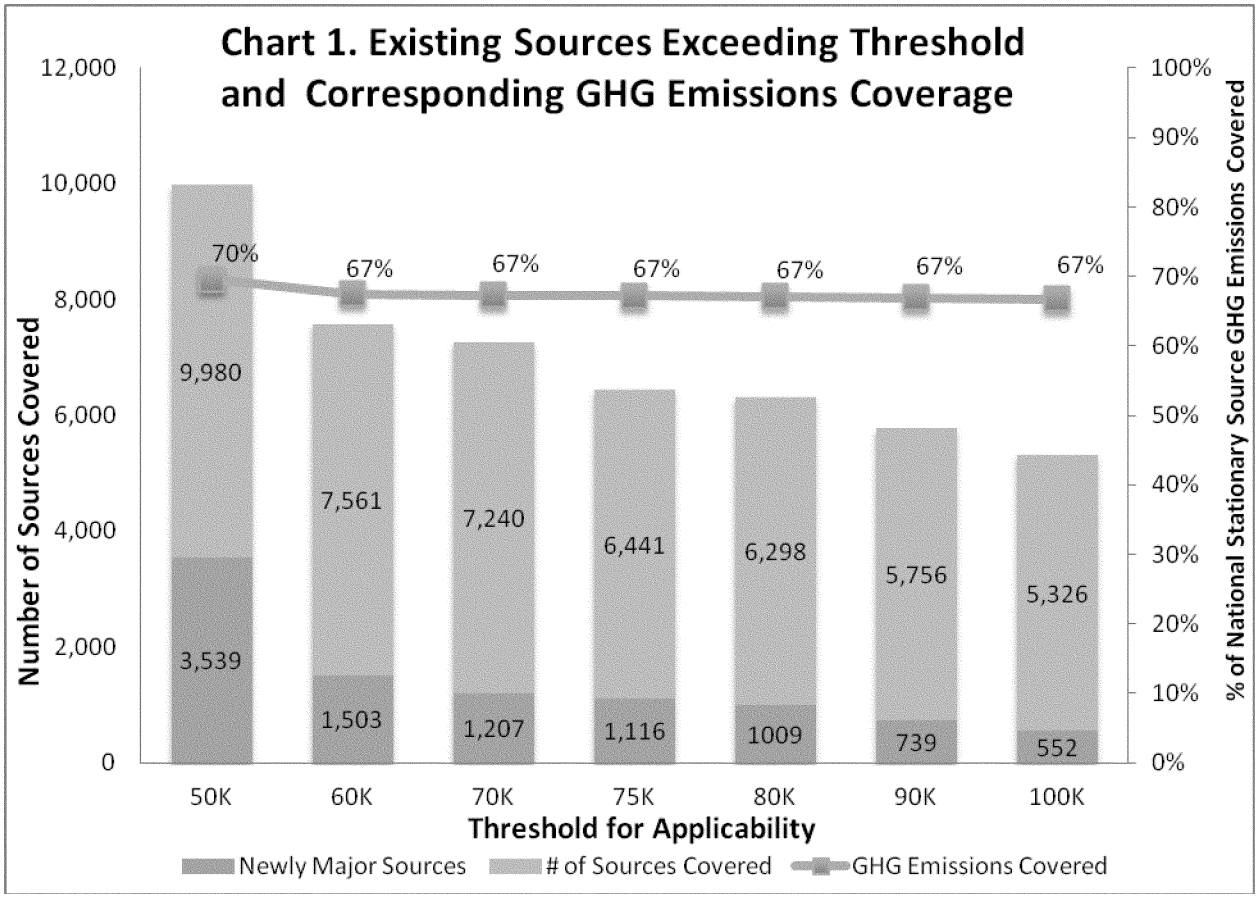
In the final Tailoring Rule, we indicated that implementation of permit streamlining approaches would assist permitting authorities by removing some sources from the permit program, or allowing more efficient processing of applications. As we indicated in the final Tailoring Rule, however, we expected it would take several years for the EPA to develop and for States to gain authority to implement effective streamlining methods. We did not anticipate that streamlining approaches would be available by the time of the Step 3 rulemaking. We also note that in the previously described consultations, the states reported that they have made little progress in implementing streamlining measures, and none have adopted measures specifically to address GHGs. This information is consistent with EPA's estimate, in general, that it would take at least 3 years for EPA to develop, and for states to adopt and implement streamlining methods, so that sufficient progress on streamlining would likely not occur before the Step 3 rulemaking deadline.

We are proposing requirements for PALs and synthetic minor limitations for sources, and these also constitute streamlining methods that can be expected to free up administrative resources. However, these methods will not be available in time to enhance the state's ability to manage the GHG permitting programs during Step 3. The benefits of a PAL will not be seen until the States adopt these requirements into their SIPs and sources apply for and receive permits that reflect PALs. For the previously-described reasons, although we are making progress in developing streamlining measures, the current status of streamlining measures supports maintaining the thresholds for Step 3.

In addition, as noted, we are continuing to consider other streamlining approaches, including limits on potential-to-emit, general permits, and presumptive BACT. For the most part, these other streamlining methods even if further developed, would have limited benefit for improving permitting administration for the source categories currently subject to GHG PSD permitting or that are under consideration for Step 3. We discuss our progress in developing these other streamlining methods, and their limited utility for Step 3, in section VI. This rulemaking provides a good opportunity to provide the EPA with input on additional streamlining ideas for implementation of the GHG permitting programs. More specifically, in section VII.B we request comment on other potential streamlining techniques that may hold promise to reduce PSD and/or title V permitting burden for sources of GHGs and permitting authorities.

E. Limited Benefit From Lowering Thresholds in Step 3

The fact that PSD would apply to the great bulk of GHG emissions at the Tailoring Rule thresholds was a factor in our decision to establish the thresholds at the 100,000/75,000 levels. For the current rulemaking, we have conducted further analysis, which shows that reducing the thresholds in Step 3 to as low as 60,000/60,000 would bring within the potential ambit of the PSD program less than an additional 1 percent of all GHG emissions from all stationary sources above the statutory thresholds while potentially adding a significant number of sources into the permitting programs. This is because of the large amount of GHG emissions that come from very large sources, coupled with the relatively small number of additional sources that emit between the 100,000/75,000 and the 60,000/60,000 levels. Lowering the thresholds to 50,000/50,000 would bring within the ambit an additional 3 percent, above the 100,000/75,000 levels, of all GHG emissions from all stationary sources above the statutory thresholds. Please refer to the following Chart. Of course, in any year, only a fraction of those emissions would actually become subject to PSD controls, which would be the fraction emitted by sources that undertake modifications or new construction. Thus, the additional reductions in GHG emissions from lowering the thresholds in Step 3 would be small under any circumstances even if the thresholds were lowered to 50,000/50,000. This small amount of environmental benefit is an additional factor that, along with the additional burden associated with permitting these sources supports not lowering the thresholds in Step 3.



F. Conclusion

In the Tailoring Rule, we recognized that the Step 1 and 2 thresholds we promulgated would create significant administrative burdens on permitting authorities. We stated that we would lower the thresholds, and thereby create additional administrative burdens, only after: (i) We had the opportunity to develop efficiencies in GHG permitting through streamlining measures; (ii) the states had the opportunity to build up their GHG permitting infrastructure and to develop GHG permitting expertise; and (iii) sources have the ability to meet the requirements of the PSD program and permitting authorities have the ability to issue timely permits. These things have not happened, as the preceding discussion has made clear. As a result, consistent with the commitment we made in the Tailoring Rule, lowering the thresholds is not feasible at this time.

Importantly, because, as noted above, permit activity is linked to macro-economic conditions, we consider the relative lull in permit activity due largely to the recent economic downturn to be temporary, and we expect that the pace of permit applications will increase. In fact, because of the link to macro-economic conditions, it is difficult to predict whether the increase in permit activity under Step 2 will occur incrementally or rapidly. If it occurs rapidly, it would be particularly burdensome for states. As a result, even a modest increase in permitting burden that could result from lowering thresholds in Step 3 could overwhelm state permitting capacity and result in substantial delays in processing permit applications.

All told, these considerations support maintaining the Tailoring Rule thresholds through Step 3. Additional time is required to develop streamlining measures to expedite permit program administration, and permitting authorities need additional time to secure resources, hire and train staff, and gain experience with GHG permitting before we move toward full implementation of the program. Accordingly and consistent with our Tailoring Rule commitment, we propose to maintain the thresholds of 100,000/75,000 tpy CO_2e.

We note that maintaining PSD and title V applicability for GHG sources at the current thresholds for Step 3 does not have implications for whether we will lower the thresholds in Step 4, which we describe above, or afterwards. Our actions in Step 4 will depend on our evaluation of the criteria and other factors described above. If those criteria and other factors point in the direction of lowering the thresholds, we will do so, and we will lower them to whatever level indicated. A decision not to lower the thresholds in Step 3 does not foreclose a decision to lower them in Step 4.

VI. Streamlining for PSD and Title V Permitting of GHGs

In the Tailoring Rule, the EPA committed to explore streamlining measures as an integral part of the phase-in approach to permitting requirements for GHG emissions under PSD and title V. Streamlining techniques would allow permitting authorities to be more efficient in administering their GHG permit programs by reducing the overall resources required to administer the PSD permitting program now and in the future. By implementing effective streamlining techniques permitting authorities could move more rapidly toward regulating a larger set of GHG sources. In the Tailoring Rule, we identified potential streamlining options. We also acknowledged that it will take us several years to develop, and for states to gain authority to

implement effective streamlining methods. We committed to continue to explore the identified options, and to request comment on these and any additional streamlining approaches in the Step 3 rulemaking.

Today, we propose to adopt two regulations: One that streamlines the PSD permit program, and one that potentially streamlines both the PSD and the title V permit program. As explained more fully below, the first regulation expands the existing PAL provisions to allow reviewing authorities to establish GHG PALs on either a mass-basis (tpy) or a CO_2e-basis, including for existing sources that are not yet GHG major sources, and allows PALs to be used as an alternative approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. As discussed below, the second regulation establishes a mechanism that allows individual sources to obtain synthetic minor limitations (potential to emit (PTE) limitations) for GHG emissions in areas subject to a GHG PSD FIP, which would allow certain sources or projects that might otherwise be required to obtain a GHG PSD permit to obtain a permit with an emissions limitation that would restrict the source's GHG emissions below the GHG PSD permitting threshold.

We previously had not identified PALs as a viable streamlining technique. Since we finalized the Tailoring Rule, we recognized that the existing PAL regulation has limited value for GHG sources, and that revising the current PAL regulations to address the unique applicability aspects associated with GHGs could streamline PSD permitting for more sources and make PALs for GHGs more useful for all source categories. Specifically, by amending the regulations, we hope to encourage greater use of GHG PALs, which in turn would encourage sources to reduce existing GHG emissions through efficiency improvements and other measures to maximize the operational flexibility provided by the PAL.

In contrast, our proposed Tailoring Rule discussed the synthetic minor—PTE mechanism we now propose, but expressed concerns that this approach might overwhelm permitting authorities based on the sheer number of sources that could apply for individual synthetic minor permits. Since finalizing the Tailoring Rule, we have continued to evaluate this. We have concluded that offering a mechanism to establish PTE limits for individual sources provides environmental benefit, and helps streamline the PSD and title V permit programs, at least in the short term.

Accordingly, today we propose to amend the federal PSD regulations to create authority for (i) reviewing and permitting authorities to issue PALs to major and potentially-major GHG stationary sources on either a mass-basis or a CO_2e basis and also to allow such PALs to be used as an alternative approach for determining whether a project is a major modification and subject to regulation for GHGs by amending regulations in 40 CFR 51.166 and 52.21, and (ii) federal reviewing authorities to issue GHG synthetic minor permits by amending regulations in 40 CFR 52.21. We also discuss our progress in evaluating the suitability of other streamlining options that we identified in the final Tailoring Rule including:

(1) Defining PTE for various source categories,

(2) Establishing emission limits for various source categories that constitute presumptive BACT,

(3) Establishing procedures for use of general permits.

Although we propose two streamlining regulations on a more rapid schedule than we originally envisioned, we do not project that these approaches will provide a sufficient reduction in the immediate permit workload to justify a decrease from the Step 1 and Step 2 applicability levels. The PAL rule, in fact, may increase the immediate short term workload by requiring development of PAL provisions and potential SIP revisions, as well as gaining experience in issuing PALs, but will reduce the long term workload on reviewing authorities and sources. The GHG synthetic minor permit program will reduce the short term workload by providing a less burdensome permitting process, and it may allow some sources to avoid PSD and title V permitting at the current Step 1 and Step 2 applicability levels. We believe that these streamlining regulations will offer advantages to industry, permitting authorities and the environment. They will provide operational flexibility to sources and will also provide incentives for sources to install good emission control systems to maximize operational flexibility. These streamlining regulations also help build GHG permitting capacity, because both regulations still require the reviewing authority to gain an understanding of GHG emissions for the individual source in context of establishing appropriate emission limitations and monitoring, recordkeeping and reporting requirements. Accordingly, we believe implementation of both regulations should decrease overall administrative burdens and thus could enable us to reduce the GHG applicability thresholds at some time in the future.

The following discussion outlines our two streamlining proposals, and then discusses the viability of other streamlining options.

A. Plantwide Applicability Limitations for GHGs

1. What is the EPA proposing?

Our proposal intends to provide permitting authorities with the authority to issue GHG PALs to sources at which GHG emissions could become subject to regulation, and which then must undertake a major modification NSR applicability determination. We provide a summary of several approaches for amending the regulatory language to implement a GHG PALs program, and request comment on possible changes to the regulations, any of which we may finalize.

We propose three changes to the existing PSD regulations in 40 CFR 51.166 and 52.21. These changes allow reviewing authorities to issue PALs to both existing major and potentially major GHG stationary sources on either a mass-basis or a CO_2e basis and to allow GHG PALs to be used as an alternative approach for determining whether a project is a major modification and subject to regulation for GHGs. The proposed changes would continue to protect the environment from adverse impacts from projects that would increase emissions. The changes would also streamline GHG preconstruction permitting as part of our overall efforts to tailor the PSD applicability provisions to include regulation of GHG emissions.

Specifically, we propose to amend the regulations to allow reviewing authorities to (1) issue PALs to GHG-only sources [31]; (2) issue either a mass-based (tpy) or a CO_2e-based PAL to a particular source; and (3) allow compliance with a GHG PAL to be used as an alternative applicability approach for determining whether a project is a major modification and subject to regulation [32] for GHGs. We believe these changes are appropriate to enable the use of PALs for GHG, given the unique

[31] A GHG-only source is a source that emits or has the potential to emit 100/250 tpy GHG on a mass-basis, and emits or has the potential to emit 100,000 tons per year of CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.

[32] For an explanation of ''subject to regulation,'' *see* the background section in the Tailoring Rule at 75 FR 31516.

characteristics of GHGs and the subject to regulation applicability approach adopted for GHGs in the Tailoring Rule. We request comment on each aspect of this proposal.

2. What is a PAL?

Under the EPA's regulations, a PAL is an emissions limitation expressed in tons per year for a pollutant that is enforceable as a practical matter and is established source-wide in accordance with specific criteria.[33] PALs are voluntary in the sense that sources may, but are not required, to apply for a PAL, and whether to issue a PAL to particular source is at the discretion of the reviewing authority. PALs offer an alternative method for determining major NSR applicability. If the overall emissions at a source remain below the PAL level, the source can make changes at the source that do not trigger major NSR. This allows sources to respond rapidly to market conditions, while assuring there is no adverse impact to the environment from the change. A PAL also results in significant environmental benefit, by providing the community with an understanding of the long-term emissions impact from a facility, preventing emissions creep (i.e., a series of unrelated individual emissions increases that are below major NSR applicability thresholds), and requiring enhanced monitoring, recordkeeping and reporting to demonstrate compliance with the PAL.

3. Why are we proposing to amend the regulations?

The EPA reads its current PAL and PSD regulations as restricting permitting authorities from issuing certain kinds of GHG PALs. We interpret our current regulations to restrict sources that can obtain GHG PALs to existing major stationary sources, [34] and to not allow sources to rely on the PALs emissions limitation in determining whether GHG emissions are ''subject to regulation.''

The PSD provisions generally define a ''major stationary source'' as a stationary source which emits or has the potential to emit 100 or 250 tpy or more of a regulated NSR pollutant, depending on the type of source.[35] A GHG-only source is a source that emits or has the potential to emit 100/250 tpy GHG on a mass-basis, and emits or has the potential to emit 100,000 tons per year of CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.[36] Regardless of the amount of GHGs currently emitted, a GHG-only source is a minor source for purposes of PSD, and only becomes major for PSD when it proposes to undertake a change that increases GHG emissions by at least 75,000 tpy CO_2e. Currently, reviewing authorities using the federal PAL provisions [37] can only issue a PAL to a GHG-only source when the source proposes to undertake such a change, thus becoming a major stationary source.[38] As a result, GHG-only sources may not currently use the alternate major NSR applicability provisions provided by a PAL in the same way that existing major stationary source of other regulated NSR pollutants may. Instead, GHG-only sources must wait to obtain a PAL until they actually propose to make a change that qualifies the source as a major stationary source under the PSD program.[39]

Moreover, under current regulations any EPA-issued PAL can only be mass-based. This requirement is due to the fact that PALs are an alternative for NSR, which is triggered by mass-based changes in emissions. Consequently, GHG sources use tpy CO_2e to determine whether a change causes GHG emissions to be subject to regulation, but tpy of mass emissions of the pollutant to determine whether a change results in a major modification. Thus, under the current regulations, sources using the PAL provisions must still monitor both metrics to ultimately determine whether a change triggers major NSR review.

We believe changing the regulations to remove these mass-based restrictions will provide sources with additional operational flexibility, and reduce GHG workload burdens on reviewing authorities by decreasing the number of PSD permit applications reviewing authorities must process for these sources over the long term. Providing an option that allows a source to use a GHG PAL will help streamline the major NSR permitting program and provide more operational flexibility to sources. Being able to establish a PAL would provide planning certainty to sources, and would relieve the current time pressure to issue a PAL permit concurrent with authorization for a planned major modification which could potentially delay that project. We also believe that compliance with a GHG PAL generally assures that the environment remains protected from adverse air impacts resulting from changes a source undertakes in compliance with such a PAL, regardless of which metric is specified to measure GHG emissions in that PAL, because emissions cannot exceed this pre-established level without further review. PALs also provide an incentive for a source to minimize GHG emissions increases from future projects.

A significant rate is a threshold for applying NSR to modifications. Only emissions rate increases above the significant rate trigger major NSR requirements. Currently, a reviewing authority may establish the PAL level for a pollutant by adding its significant rate to baseline actual emissions. Unless a significant emissions rate has been established, the significant rate is effectively zero, i.e., any increase in emissions would trigger NSR.

The EPA did not promulgate a mass-based significant emissions rate for GHG emissions in the final Tailoring Rule. Thus, if a reviewing authority establishes a mass-based GHG PAL, under our current interpretation of the regulations, the PAL may not include any margin above the baseline actual emissions for emissions growth. Absent this margin, a GHG PAL provides less flexibility to a source when compared to PALs for other regulated NSR pollutants.

The proposed rules provides GHG PAL sources with the same kind of flexibility sources currently have for other regulated NSR pollutants by allowing sources to establish a CO_2e-based PAL using the 75,000 tpy CO_2e applicability threshold for GHGs. A reviewing authority could add the 75,000 tpy CO_2e to a source's CO_2e baseline actual emissions to establish the PAL level, because the Tailoring Rule established 75,000 tpy CO_2e as the appropriate rate of emissions increase for the GHG applicability threshold for existing sources. Changing the regulations will also have the effect of streamlining future major NSR applicability determinations for sources that choose a CO_2e PAL, by eliminating the need to evaluate GHG emissions on a mass basis for major NSR applicability as long as the source is complying with the CO_2e PAL, because a CO_2e PAL can function to assure both that GHG emissions are not subject to regulation, and that a change does not trigger a major modification.

[33] 40 CFR 52.21(aa)(2)(v).

[34] 40 CFR 52.21(aa)(1).

[35] 40 CFR 52.21(b)(1)(i)(*a*)–(*b*).

[36] For the purpose of this rule, we term such sources ''GHG-only sources.''

[37] There can be alternative state PAL provisions or they may simply adopt EPA's regulations.

[38] 40 CFR 52.21(b)(49)(v)(b).

[39] Because an anyway source emits or has the potential to emit another regulated NSR pollutant in amounts at or above the major source thresholds, it is a major stationary source, and it may apply for a PAL for its GHG emissions on a mass basis at any time under the current regulations as long as it otherwise qualifies (*e.g.,* has sufficient emissions data to establish a PAL).

In sum, we believe that the current PAL regulations are inconsistent with the outcome achieved when the PAL rules are applied to regulated NSR pollutants other than GHGs, and therefore are overly restrictive with respect to GHG-only sources. Accordingly, we are proposing to amend the major NSR regulations and PAL rules to allow reviewing authorities to (1) issue PALs to GHG-only sources;[40] (2) issue either a mass-based (tpy) or a CO_2e-based PAL to a particular source; (3) allow CO_2e-based PALs to include the 75,000 tpy CO_2e rate of emissions increase applicability threshold; and (4) allow compliance with a GHG PAL to be used as an alternative applicability approach for determining both whether a project is a major modification and whether GHG emissions are subject to regulation. Provided a source complies with a GHG PAL, GHG emissions at the source will not be ''subject to regulation,'' and a project at the source will not result in a major modification. We request comment on each one of these proposals.

In the Tailoring Rule the EPA amended the definition of ''subject to regulation'' to establish a threshold level of GHG emissions that a source must meet, on both a source and project basis, before GHGs to be considered an NSR regulated pollutant for PSD permitting purposes. However, the EPA also made clear that its action had the same substantive effect, and should be treated as if the EPA had revised other components of the definition of ''major stationary source'' to achieve the same effect. Thus, in addressing PALs for GHGs in this rule the EPA is continuing to focus on the thresholds incorporated into the ''subject to regulation'' provision, consistent with the approach in the Tailoring Rule.

4. Options for Allowing GHG-Only Sources To Obtain a GHG PAL

We request comment on two approaches for regulating GHG-only sources under a PAL. We call the first approach the Major Source Opt-in Approach. This approach is consistent with the current restriction that only allows reviewing authorities to issue PALs to existing major stationary sources, but the approach would provide GHG-only sources the ability to become existing major stationary sources, and thus receive PALs for GHGs and any other pollutant emitted by the source. A GHG-only source could become a major stationary source by agreeing to be considered an existing major stationary source, without having a specific qualifying project that increases CO_2e emissions at the source by at least 75,000 tpy CO_2e.

We call the second approach the Minor Source Approach. In contrast to the Major Source Opt-in approach, under the Minor Source Approach a GHG-only source would remain a minor source. A reviewing authority could issue GHG PALs to the GHG-only sources without requiring the source to become an existing major stationary source, and thus could not include PAL limits for non-GHG pollutants.

Under the Major Source Opt-in Approach, we would amend the regulations to allow any existing stationary source that emits or has the potential to emit GHGs in amounts above the first part of the ''subject to regulation'' applicability threshold (currently 100,000 tpy CO_2e) and above the 100/250 tpy major stationary source threshold, to submit an application for a PAL, in which the source agrees to be considered an existing major stationary source for GHG emissions. As long as the source complies with the GHG PAL, it would not trigger the PSD permitting requirements for GHGs for any project, but the regulations would continue to require the source to evaluate whether the change triggers PSD applicability for other regulated NSR pollutants in the attainment or unclassifiable area. This is because PSD applies whenever a major stationary source undertakes a project that results in a significant net emissions increase of any regulated NSR pollutant.

The EPA believes that allowing GHG-only sources to opt into major stationary source status is consistent with the Act. But for the Tailoring Rule, GHG-only sources qualify as ''major emitting facilities,'' because such sources emit or have the potential to emit 100 or 250 tpy GHG. Thus, these sources fall within the statutory scope of sources that, absent the Tailoring Rule, we would have authority to regulate for purposes of PSD. Although we took a limited interpretation of how to exercise this authority through the Tailoring Rule, we believe that the Major Source Opt-in Approach is consistent with the Tailoring Rule's schedule for further phasing-in additional GHG sources into the PSD permitting program.

In the final Tailoring Rule, we indicated that we would base our decision to include additional sources in the GHG permitting programs on an assessment of three criteria. These criteria are: (i) Whether the EPA could develop streamlining measures, (ii) the time that permitting authorities need to ramp up their resources, and (iii) sources' abilities to meet the requirements of the PSD program and permitting authorities' ability to issue timely permits. Each of these criteria supports expanding the PSD permit program to include a source that opts into the GHG PAL regulatory structure. First, while the Major Source Opt-in Approach has the potential to increase the total number of GHG major stationary sources, it does so in a manner that decreases the long-term permitting burden for both the source and the reviewing authority. This is because the source would likely require fewer permit actions over the life of a PAL. Thus, the Major Source Opt-in approach streamlines the PSD permitting program, which will assist permitting authorities when the EPA regulates additional GHG sources under the PSD program. Second, permitting authorities can gain valuable experience in issuing PAL permits that can build staff expertise. This, in turn, helps permitting authorities' efforts to ramp up their PSD permitting programs in a more timely and efficient manner. Third, sources demonstrate an ability to comply with major stationary source permitting requirements by voluntarily seeking a PAL under the Major Source Opt-in provisions. If a source could not comply, then it would not seek a GHG PAL. Moreover, reviewing authorities likely would only agree to issue a PAL if they believe they have the necessary resources to issue the PAL(s), and doing so would not detrimentally affect their obligations to otherwise issue timely permits. In sum, if a source opts-into the program, and a reviewing authority agrees to permit the source, then we believe these sources are properly brought within the PSD permitting program.

Under the Major Source Opt-in Approach, a source could also choose to establish PALs for its non-GHG regulated NSR pollutants to better manage applicability for all pollutants at the source, including those regulated NSR pollutants for which the source is not major. Under this approach, the source will continue to be considered a major source under PSD and title V at the expiration of the PAL (generally 10 years after issuance). If the source is subject to the federal PSD program for GHG emissions, and to a state SIP-approved PSD program for its non-GHG regulated NSR pollutants, then whether a source can apply for, and receive, a PAL for its non-GHG regulated NSR

[40] A GHG-only source is a source that emits or has the potential to emit 100/250 tpy GHG on a mass-basis, and emits or has the potential to emit 100,000 tons per year of CO_2e or more, but does not emit or have the potential to emit any other regulated NSR pollutant at or above the applicable major source threshold.

pollutants will be governed by the applicable SIP-approved regulations and the state reviewing authority. Neither the EPA, nor its delegated authority, would issue PALs for non-GHG regulated NSR pollutants under 40 CFR 52.21, unless a FIP would govern PSD applicability for that non-GHG pollutant. As with the current PAL regulations, the ultimate decision to issue a PAL remains with the reviewing authority, and individual permitting authorities will have to determine whether they will issue PALs for non-GHG pollutants also emitted from a source that receives a GHG PAL through the Major Source Opt-in Approach.

We are concerned, however, about the potential impact on reviewing authorities of allowing GHG-only sources to obtain PALs for all their regulated NSR pollutants, as this could cause a short-term increase in regulatory burden on permitting authorities at a time when they are ramping up their programs to address other GHG major stationary sources. We request comment on this aspect of the Major Source Opt-in Approach and welcome suggestions for refining the approach to address concerns with short-term workload burdens for permitting authorities.

Under the Minor Source Approach, we would amend the regulations to allow a GHG-only source to submit an application for a GHG PAL, and would also allow the source to maintain its minor source status. A GHG-only source that complies with its GHG PAL will not trigger PSD permitting requirements for GHGs, but could trigger PSD for other regulated NSR pollutant if it undertakes a change that increases emissions by a ''major'' amount for any non-GHG regulated pollutant. *See* 40 CFR 51.166(b)(1)(i)(*c*). That is, this approach would authorize permitting authorities to use the PAL program for minor sources only to regulate GHG emissions.

Moreover, under the Tailoring Rule existing minor sources that emit only GHGs, but no other regulated pollutants in major amounts, must determine whether any project will result in GHG emissions that are subject to regulation (on a CO_2e basis), and correspondingly will also result in a major modification (on a mass basis). Because GHG-only sources must undertake these determinations for any change, even those that would not make the source major for GHGs, we believe that extension of the PAL program to these sources through the Minor Source Approach is consistent with the purposes and design of the PAL program—to allow use of a PAL as an alternate major modification applicability approach.

Issuing PALs to GHG-only sources that remain minor sources does not conflict with the basis for the current PAL rules. When we promulgated the PAL rules in 2002 (67 FR 80186), we limited the application of the PAL provisions to existing major stationary sources only. We included this provision based on our decision to limit PALs to sources that had historical emissions through which the reviewing authority could establish a baseline actual emissions level. New major stationary sources do not have historical actual emissions from which a reviewing authority can establish an actuals PAL, and so we declined to include these sources in the actuals PAL program.

When we originally promulgated the PAL rules, we also chose not to extend the PAL program to minor (source) NSR permit programs, because PALs are an alternate major NSR applicability provision to determine whether a project results in a major modification, and we did not believe the program would be useful to minor sources. At that time, the rules generally required only existing major stationary sources to undertake a major modification applicability analysis to determine whether a change triggers PSD review.[41] Given the unique ''subject to regulation'' PSD applicability requirement for GHGs, wherein an existing source that emits major amounts of GHGs is a major stationary source only at the time it proposes to undertake a project that will result in an emissions increase of 75,000 tpy CO_2e or more, we do not believe that extending the PAL provisions to GHG-only sources runs afoul of the reasoning we provided when initially limiting the PAL program to existing major stationary sources.

As explained previously, we propose to limit the Minor Source approach to allow reviewing authorities to establish PALs only for GHG emissions, and not for other regulated NSR pollutants for which the source remains a minor source. Because the GHG-only source remains a minor source (absent any other PSD-triggering change) and, generally, will not trigger a major modification applicability analysis for increases in other regulated NSR pollutants, we believe it unnecessary to extend the PAL authority under this approach to other pollutants. Moreover we recognize that extending the PAL program in that way could place a burden on permitting authorities and redirect resources needed to issue permits to other GHG major stationary sources.

The Minor Source Approach is consistent with the CAA in that it regulates sources that but for the Tailoring Rule would be major stationary sources based on the mass of their GHG emissions. This approach is also consistent with our Tailoring Rule principles. But unlike the Major Source Opt-in Approach, which defines the scope of pollutants included in the PAL based on an individual permitting authority's discretion and ability to regulate a given source, under the Minor Source Approach, the EPA has determined that the scope of the program is limited only to a source's GHG emissions and could not include PAL limits for non-GHG pollutants emitted in amounts below the major source levels. Again, as with the Major Source Opt-in Approach, the Minor Source Approach fulfills our streamlining goals by bringing more sources into the major NSR permitting provisions, in a manner that best manages reviewing authorities' long-term permit burden.

We request comment on both the Major Source Opt-in Approach and the Minor Source Approach. We also request comment on whether we should finalize both approaches. That is, sources would have the ability, consistent with the ultimate decision of its reviewing authority, either to opt into major stationary source status and establish PALs for all pollutants, or to maintain minor source status and obtain a PAL for GHG emissions only.

5. Extending PALs to GHGs on a CO_2e Basis and Using PALs To Determine Whether GHG Emissions Are ''Subject to Regulation''

Currently, the EPA reads the PAL regulations to allow reviewing authorities to establish a GHG PAL only on a mass basis. Today we propose to allow reviewing authorities to establish GHG PALs on either a mass basis or a CO_2e basis. More specifically, we propose to allow reviewing authorities to establish a CO_2e-based GHG PAL by adding up to an amount equal to the emissions increase contained in the ''subject to regulation'' applicability threshold (e.g., 75,000 CO_2e) to the source's baseline actual emissions. We also propose to allow GHG PALs, either on a mass basis or a CO_2e basis, to serve as an alternate applicability approach for determining whether GHG emissions are subject to regulation. That is, rather than applying the emissions increase tests (significant emissions increase and significant net emissions increase)

[41] The provisions in 40 CFR 51.166(b)(3)(iii) illustrate an exception to this general rule but we did not contemplate that exception in creating the PAL rules in 2002.

currently contained in the ''subject to regulation'' definition, a source could demonstrate that GHG emissions are not ''subject to regulation'' by complying with a GHG PAL. Compliance with a GHG PAL would be used as an alternative applicability approach for determining that the source neither causes GHG emissions to be subject to regulation, nor causes the GHG source to have a major modification.

We further believe that it is necessary to allow the alternative applicability provision to be included in ''subject to regulation'' determinations for GHG PALs, because failing to do so would negate the flexibility gained by creating a GHG PAL. This is because without the changes EPA is proposing, sources would still be required to monitor individual emissions changes using the procedures in 40 CFR 52.21(a)(2)(iv) to determine whether a source triggers the subject to regulation definition. The determination of whether GHGs are ''subject to regulation'' uses procedures that rely on an emissions-unit-by-emissions-unit analysis, and a shorter contemporaneous period to measure emissions changes, neither of which are required under a PAL. We believe that the enhanced recordkeeping, reporting and monitoring burdens of a PAL, and the environmental benefits resulting from a PAL, warrant extension of the alternate applicability provisions to subject to regulation determinations to assure that the PAL provides the intended flexibility to sources.

When we proposed the Tailoring Rule, we proposed to include applicability thresholds within the definitions of major stationary source and major modification, based on tpy emissions of CO_2e. We also proposed to establish a CO_2e-based significant emissions rate. In the final rule, we changed our regulatory approach and instead included these applicability thresholds within the ''subject to regulation'' definition, and we did not revise the definition of significant to include a CO_2e-based emissions rate. We did so, in part, because we intended this change in regulatory structure to facilitate more rapid adoption of the rules by reviewing authorities. Nonetheless, we intended the definition of ''subject to regulation'' to function in tandem with the definitions of ''major stationary source'' and ''major modification'' to determine whether a given project triggers PSD preconstruction permit requirements. That is, if a source emits GHG emissions at a level that causes the emissions to become ''subject to regulation,'' that same level of emissions increase will likely cause the source to be a major stationary source and trigger PSD requirements as a major modification. Accordingly, since the 75,000 CO_2e applicability threshold contained in the second part of the ''subject to regulation'' definition works in tandem with the ''major modification'' provision to determine whether major NSR applies we are proposing that a CO_2e-based GHG PAL can be established by adding up to an amount equal to 75,000 CO_2e to the source's baseline actual emissions as this is the appropriate applicability threshold for CO_2e tpy GHG.

In our proposed Tailoring Rule, we noted that, in rare instances, there may be an exception to this general principle, if a source emits very small amounts of a particular non-CO_2 GHG that carries a very large GWP. 74 FR 55330. We noted our concern that the proposed rule could cause sources, whose mass emissions do not meet the major stationary source tpy threshold, to nonetheless be regulated under the permit programs. When we finalized the Tailoring Rule using the subject to regulation approach, we resolved this concern by retaining both a mass-based threshold and a CO_2e-based threshold. Our intent in retaining both thresholds was to assure that no source was subject to PSD that would not otherwise meet the statutory criteria for treatment as a major stationary source.

This same regulatory structure creates the opposite effect for sources operating under a GHG PAL. Instead of providing GHG PAL sources with the ability to use either threshold to show that they are not a major stationary sources and that major NSR does not apply, sources must monitor both thresholds to prove this outcome under the current rules. This is because a mass-based GHG PAL cannot assure that there is no increase in CO_2e tpy GHG. Expanding the GHG PAL program to allow GHG PALs to be used as an alternative applicability provision for both the major modification and ''subject to regulation'' determinations resolves this dual threshold issue. We also believe that we may properly allow GHG PALs to be expressed on either a mass or CO_2e-basis, because, in essence, we intended the subject to regulation determination to be functionally equivalent to making a major modification applicability determination for GHG sources. We resolve our previous concern that relying on a single metric might lead to over-inclusion of sources that do not meet the statutory threshold for the PSD program by limiting the GHG PALs program to GHG-only sources, which are defined as those sources that, by definition, meet the 100/250 tpy major stationary source threshold. We request comment on all aspects of this proposal.

6. Can a GHG source that already has a mass-based GHG PAL obtain a CO_2e-based PAL once we issue final changes to the PAL rules?

We are proposing to add transition provisions to the PAL regulations that would allow a GHG source that has a mass-based GHG PAL to convert to a CO_2e-based GHG PAL once, at the source's option, and if agreed to by the reviewing authority. We intended these provisions to provide integrity to the PAL provisions, and assure that sources avoid casually opting out of the PAL program, rather than go through the rigorous procedures for increasing the level of the PAL.

The current PAL regulations do not contain specific provisions for dissolving an established PAL during the PAL term, but contain provisions for when a PAL expires. It is inappropriate to apply these rigorous procedures to sources that would have elected to seek a CO_2e-based PAL in lieu of a mass-based PAL, had such an option been available. We propose to include regulatory language that the expiration of PAL provisions do not apply when a source elects to convert from a mass-based GHG PAL to a CO_2e-based PAL. Instead, a source could transition to a CO_2e-based PAL and the permitting authority could dissolve the mass-based PAL without retaining the mass-based PAL level as a restriction on allowable emissions.

We also propose to include provisions that allow the mass-based GHG PAL to be converted to a CO_2e-based GHG PAL in the middle of the PAL effective period. Under the transition provision, the reviewing authority would propose to dissolve the existing mass-based PAL permit at the time it proposes the new CO_2e-based PAL permit for public comment. The reviewing authority would establish the new CO_2e-based GHG PAL following the standard procedures (10-year lookback for baseline actual emissions, 10-year PAL effective period, etc.) in the current PAL regulations. Once a final CO_2e-based PAL permit is issued, the permitting authority may also finalize its proposed action to dissolve the mass-based PAL permit and remove any applicable requirements from the title V permit following the appropriate title V procedures. This would, in essence, create a new PAL and establish a new 10 year term.

We also propose to allow a reviewing authority to use a slightly different procedure for this conversion from the standard PAL procedures. If the baseline

actual emissions period the reviewing authority used to establish the mass-based GHG PAL is no longer within the 10 year lookback period currently available to the source, then the transition provisions would allow that source a one-time conversion of a mass-based GHG PAL to a CO_2e-based GHG PAL using the same baseline actual emissions period used to establish the mass-based GHG PAL. The new PAL effective period would be the remainder of the mass-based GHG PAL's effective period. For example, if a reviewing authority issued a mass-based GHG PAL to a source that became effective in 2011, that PAL's effective period runs for 10 years through 2021. If the same source converts that mass-based GHG PAL to a CO_2e-based PAL in 2014, and elects to use the expired, mass-based GHG PALs baseline actual emissions years, then the CO_2e-based GHG PAL would be effective for the remaining 7 years of the mass-based GHG's PAL effective period.

We request comment on these procedures for converting a mass-based GHG PAL to a CO_2e-based GHG PAL. Specifically, we request comment on whether there are existing mass-based GHG PALs for which transition provisions are needed. More specifically, should we allow such a transition, or should we decline to provide transition provisions? If we decline to provide a transition should we instead require sources either to maintain both PALs, or require the sources to comply with a source wide emissions cap equal to the PAL level that functions as a synthetic minor limitation? We also request comment on whether we should provide a temporary transition provision to allow sources to convert from the mass-based GHG PAL to the CO_2e-based GHG PAL only for a limited time after the effective date of the regulatory changes, or whether the procedures should remain available for the duration of the PAL provisions. Specifically, we request comment on whether there are implications for major NSR compliance if sources are allowed to switch from a mass-based PAL to CO_2e-based PAL at any time, or whether providing the option for the duration of the program could encourage certain types of environmentally preferable projects.

7. How would we change the regulatory provisions to implement PALs for GHG-only major sources?

To implement our proposed changes, we would revise a number of existing regulatory provisions, depending on the specific approach selected. Under the Major Source Opt-in Approach, we propose to change the definition of major stationary source at 40 CFR 52.21(b)(1) to add a paragraph that defines Major Source Opt-in GHG-only sources as major stationary sources. Under the Minor Source Approach, we propose to revise the applicability paragraph for the PAL provisions at 40 CFR 52.21(aa)(1) to include GHG-only sources.

In addition, under the Major Source Opt-in Approach, we propose to revise the PAL Permit Application Requirements provisions at 40 CFR 52.21(aa)(3) and (4) and Contents of the PAL Permit provisions at 40 CFR 52.21(aa)(7) to include provisions for opting into existing major stationary source status.

Under either approach, we would: (1) Revise the PAL rules to add transition provisions to 40 CFR 52.21(aa) for converting from a mass-based PAL to a CO_2e-based PAL including revisions to the PAL expiration provisions; (2) add a paragraph to the ''subject to regulation'' definition at 40 CFR 52.21(b)(49) and the PAL applicability section at 40 CFR 52.21(aa)(1) to indicate that a source that complies with a GHG PAL is not subject to regulation for GHG emissions; (3) revise the PAL rules at 40 CFR 52.21(aa)(6) to allow CO_2e-based PALs to include the 75,000 tpy CO_2e rate of emissions increase applicability threshold by adding this amount to a source's baseline actual emissions; and (4) revise the definition of PAL and PAL pollutant at 40 CFR 52.21(aa)(2)(v) and (x) to include CO_2e as a metric of GHG emissions.

B. Synthetic Minor Source Permitting Authority for GHGs

1. What is the EPA proposing?

We are proposing to create synthetic minor permit authority, within the existing federal PSD regulations in 40 CFR 52.21, for the purpose of issuing ''subject to regulation'' synthetic minor permit limitations on a CO_2e basis for GHGs. We are also proposing to amend the federal minor NSR program in Indian country for the purpose of issuing synthetic minor permit limitations for GHGs. These regulatory changes would allow certain sources or projects that might otherwise be required to obtain a GHG PSD permit, pursuant to 40 CFR 52.21, to obtain a ''subject to regulation'' limitation that restricts the source's GHG emissions below the ''subject to regulation'' threshold(s). That is, for sources located in a jurisdiction in which the federal PSD permitting program applies, we propose a mechanism that would allow the EPA, or its delegated agent, to issue a permit containing synthetic minor limitations for GHGs to any source that emits or has the potential to emit GHGs above the applicable subject to regulation thresholds and that voluntarily requests a restriction on its PTE. Although we would establish this program using our PSD permitting authority, a synthetic minor permit limitation issued under this authority could also effectively limit the source's GHG PTE for purposes of title V applicability. As a general matter, we believe that synthetic minor limits for GHGs should be available as an option for sources that would prefer to take a legally and practicably enforceable limitation on GHG emissions in order to avoid major source permitting requirements. We believe that many state and local permitting authorities will already have mechanisms in place to issue such GHG synthetic minor limits to sources that request them, including title V permitting programs, state minor source permitting programs, or federally enforceable state operating permit programs. Nonetheless, we request comment on whether permitting authorities implementing SIP-approved PSD permitting programs lack mechanisms to create synthetic minor limitations for GHGs, and if so, how that gap in permitting authority or mechanism could best be filled.

It is important to note that we only propose to issue synthetic minor permits for GHG emissions, not for other regulated NSR pollutants, and we will only do so for sources located in areas where the EPA is the GHG permitting authority (including areas subject to a GHG FIP). These synthetic minor permits would also be available where the federal PSD program is implemented by a state permitting authority under a delegation agreement because delegated states issue PSD permits on behalf of the EPA in those areas under 40 CFR 52.21. We, however, are not proposing to issue synthetic minor source limits for non-GHG pollutants under this rule. States and some tribes operate minor source permitting programs that cover these other pollutants, and the EPA also operates a minor source permitting program in Indian country. If a source wishes to obtain a synthetic minor limit for any other pollutant, it should seek that limit under the applicable minor source program.

The EPA has long recognized synthetic minor permits as a way to restrict a source's PTE and thus avoid major source NSR and title V permitting

requirements.[42] While we discussed the use of synthetic minor permits for establishing PTE restrictions on GHG emissions in our proposed Tailoring Rule, we expressed concerns that establishing GHG synthetic minor limitations in individual permits could overwhelm reviewing and permitting authorities based on the sheer number of sources that we anticipated would apply for PSD permits. Thus, we proposed to focus our attention on developing category specific approaches for limiting PTE.

Since finalizing the Tailoring Rule, we reconsidered this conclusion, and now believe that establishing synthetic minor limitations for individual sources could increase permitting authorities' capacity to regulate GHG emissions by providing experience in addressing emissions limitations, and monitoring, recordkeeping and reporting requirements specific to GHG emissions. We also believe that it would lead to an overall reduction of permitting burden in that synthetic minor permits generally require fewer administrative resources than full PSD permitting and title V permitting, to which these sources could otherwise be subject.

Moreover, streamlining ideas often result from repeat experiences. After issuing permits that share common features, a reviewing or permitting authority might formulate new ideas for effective streamlining techniques. We now believe that issuing synthetic minor permits is a key component of our overall efforts to gain experience in permitting GHG sources to phase additional sources into the GHG program, because it can help manage sources currently subject to the program and help identify opportunities for further streamlining the GHG permitting programs. Moreover, allowing sources to obtain a synthetic minor limitation, in lieu of triggering major NSR requirements, encourages sources to effectively minimize project emissions through efficiency improvements or other measures such that the total GHG emissions to the environment from the project are lower than might otherwise occur.

We acknowledge that other mechanisms may currently exist to establish synthetic minor limitations for GHGs. We do not intend today's proposal to supplant or supersede other available mechanisms for creating synthetic minor limitations. Rather, our intent is to ensure that we are able to issue GHG synthetic minor limits in the areas subject to the federal PSD permitting program for GHGs to avoid a potential gap in synthetic minor permitting authority and to ensure that we are able to efficiently manage our administrative resources for the federal PSD program. Notwithstanding today's proposal, we encourage states to use appropriate existing mechanisms, or to create new authority if needed, to issue synthetic minor limitations for GHGs.

2. What is synthetic minor limitation, and what is its function?

A synthetic minor limitation is a legally and practicably enforceable restriction that a source voluntarily seeks to avoid major stationary source requirements, such as the PSD or title V permitting programs. Synthetic minor limitations allow sources to avoid these permit programs in two ways. First, a reviewing or permitting authority can issue a synthetic minor limitation to assure that a stationary source does not emit above the major stationary source threshold, and therefore, that the stationary source remains a minor source for either one or both permit programs. Second, a reviewing or permitting authority can issue a synthetic minor limitation to assure that emissions increases from a project remain below the relevant significant rate for a specific regulated NSR pollutant.

As we explained in the Background Section, our regulations define a ''major stationary source'' for purposes of PSD as a stationary source that emits, or has a potential to emit, at least 100 tpy, if the source is in one of 28 listed source categories, or, if the source is not, then at least 250 tpy, of a regulated NSR pollutant. CAA section 169. A ''major stationary source'' for title V includes sources that emit or have the potential to emit above 100 tpy or more of any air pollutant subject to regulation. CAA sections 501, 302.[43] We refer to these 100 or 250 tpy amounts as the major source applicability thresholds. These thresholds are computed on a mass-basis for each regulated NSR pollutant or title V air pollutant.

Because the definition of major stationary source relies, in large part on, a source's ''potential to emit,'' the definition of ''potential to emit'' is extremely important in determining the applicability of PSD and title V for a particular source. The PSD regulations define PTE as:

> The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of fuel combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.[44]

40 CFR 52.21(b)(4), 51.165(a)(1)(iii), 51.166(b)(4). The title V regulations are similar. 40 CFR 70.2.

If a source has no practicably enforceable emissions limitations that restrict the amount of a pollutant the source may emit, and the source has no restrictions on its capacity utilization or hours of operation, we require the source to use its highest expected emissions rate and ''assume operation at maximum design or achievable capacity (whichever is higher) and continuous operation (8760 hours per year)'' to compute its potential to emit.[45] Thus, if a source will actually emit below its maximum capacity to emit, a synthetic minor limitation can play an integral role in limiting the source's PTE to a level below this maximum level. If the source accepts legally and practicably enforceable limits and requirements sufficient to limit its PTE, that source can be treated as a minor source, rather than a major source, for purposes of our regulations.

Synthetic minor limitations are also important for determining whether a project will result in an emissions increase that exceeds the significant rate for a regulated NSR pollutant, thus triggering PSD permitting requirements. While the significant rate for GHGs is currently zero tpy, thus making this type of synthetic minor limit less practical for GHG sources, the methods used to determine such emission increases are applicable to GHGs because they are also used to determine whether GHGs are ''subject to

[42] *See, e.g.,* Guidance on Limiting Potential to Emit in New Source Permitting (June 13, 1989); Guidance and Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits (Jan. 25, 1995). The rules proposed here for limiting potential to emit should be read in light of our extensive prior guidance on this issue.

[43] As explained in the Tailoring Rule, while the statutory provision addresses any air pollutant, we have historically applied the PSD and title V programs only to pollutants subject to regulation.

[44] 40 CFR 52.21(b)(4). Following two court decisions, *National Mining Association* v. *EPA,* 59 F.3d 1351 (DC Cir.1995) and *Chemical Manufacturers Ass'n* v. *EPA,* No. 89–1514 (DC Cir.1995), we clarified that the term ''federally enforceable'' should be read to mean ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit, at 3 (Jan. 22, 1996).

[45] *See* Memo from Terrell E. Hunt, Associate Enforcement Counsel Air Enforcement Division Office of Enforcement and Compliance Monitoring, and John S. Seitz, Director Stationary Source Compliance Division Office of Air Quality Planning and Standards, June 13, 1989.

regulation.'' To compute whether a project will result in a ''significant emissions increase'' under the federal PSD regulations, a source has the option of using either ''projected actual emissions,'' or PTE to estimate post-change emissions. A source opting to use PTE can reduce the amount of its PTE by accepting legally and practicably enforceable limitations on its operations. To compute whether a project will result in a ''significant net emissions increase,'' a source must compute emissions increases from projects that occur during the contemporaneous period. A creditable emissions increase is computed by comparing ''baseline actual emissions'' to the unit's post-change PTE. A permitting authority can use a synthetic minor limitation to limit an emissions unit's post-change PTE to reduce the amount of emissions increase that is creditable in a net emissions increase analysis. In computing a creditable emissions decrease, a source may only take credit for an emissions decrease that is legally and practicably enforceable. Thus a reviewing authority can use a synthetic minor limitation to create a creditable emissions reduction. 40 CFR 52.21(b)(3)(vi)(b).

We call any permit used to restrict a source's PTE below either the major stationary source threshold or below the significant rate a ''synthetic minor permit.'' We call a source that accepts limitations on its operations a ''synthetic minor source.'' This is in contrast to a ''true'' or ''natural minor'' source, which is a source whose PTE remains below the threshold without any additional restrictions on the source. Again, because the major stationary source threshold and significant rate are mass-based for all non-GHG regulated NSR pollutants and title V air pollutants, synthetic minor limitations, historically, have reduced a source's mass emissions.

3. What is a ''subject to regulation'' limitation?

A ''subject to regulation'' synthetic minor limitation is unique to the GHG permitting programs. Instead of allowing a source to avoid the PSD or title V permit programs by establishing PTE limitations that reduce tpy mass emissions, a ''subject to regulation'' limitation reduces CO_2e-based GHG emissions. This unique type of limit is specific to GHGs, because of the unique way in which the EPA regulated GHG emissions through the Tailoring Rule.

As we explained in the Background Section, a source must meet two applicability requirements to trigger PSD permitting requirements for GHGs: (1) It must emit GHGs in amounts—calculated on a CO_2e basis—that make GHGs ''subject to regulation,''[46] and (2) it must also emit GHGs in amounts—calculated on a mass basis—that qualify as a major stationary source (*e.g.,* 100 or 250 tpy) and, if relevant, qualify as a major modification (*e.g.,* net emissions increase of more than 0 tpy). For title V, GHGs are ''subject to regulation'' at a stationary source that emits or has the potential to emit 100,000 tpy CO_2e. A ''subject to regulation'' limitation prevents a source from emitting GHGs in amounts that exceed the relevant ''subject to regulation'' applicability threshold that we established in the final Tailoring Rule. Accordingly, just like other synthetic minor limitations, a source that complies with a ''subject to regulation'' limitation can avoid triggering PSD or title V GHG permitting requirements.

As noted previously, in the Tailoring Rule, although the EPA amended the definition of ''subject to regulation'' to establish a level of GHG emissions that a source must meet, on both a source and project basis, before GHGs will be considered an NSR regulated pollutant for PSD permitting purposes, the EPA also made clear that its action had the same substantive effect, and should be treated, as having revised other components of the definition of ''major stationary source'' to achieve the same effect. Even so, because in the Tailoring Rule it was the ''subject to regulation'' provision that the EPA chose to incorporate the phase-in thresholds, in this proposal concerning PALs, the EPA is continuing to focus on the ''subject to regulation'' provision as the codification of the Tailoring Rule requirements, to be consistent with the approach in Tailoring Rule.

Like the major stationary source applicability threshold, the ''subject to regulation'' threshold relies on the concept of PTE. And like the major modification significant rate, the subject to regulation threshold also relies on PTE to compute changes in GHG emissions at the source. Accordingly, the EPA proposes to create new regulatory language to affirm the EPA's and other reviewing and permitting authorities' ability to establish limitations on a source that prevent a source from emitting GHG emissions above subject to regulation thresholds on a source-wide basis or for individual modifications.

Because we are not proposing to amend the regulatory definition of PTE, consistent with the EPA's current policy, we will recognize legally and practicably enforceable restrictions for determining whether a source's PTE is below the subject to regulation threshold and for determining whether an individual modification is below the subject to regulation threshold. As with limitations on ''potential to emit'' in traditional synthetic minor permits under our current policy, these restrictions need not be federally enforceable as long as they are enforceable by the permitting authority.[47]

4. Why does the EPA need authority to issue synthetic minor source permits?

In general, the EPA does not have a federal permitting program for minor sources. Although the EPA recently finalized a minor NSR permitting program for Indian country, that program did not affect permitting outside of Indian country or include regulation of GHG emissions.[48] The EPA is now the GHG permitting authority in areas subject to a PSD FIP, including Indian country, but does not have a generally applicable minor source permitting program that the EPA can use to restrict GHG PTE for sources that might want to request voluntary limitations to avoid PSD permitting for GHGs.[49] In these areas it is not clear whether sources will be able to obtain synthetic minor limits for GHGs from states or local permitting authorities through other permitting mechanisms, or through any other cognizable mechanisms for establishing a synthetic minor limit. Without a federal synthetic minor permitting program for GHGs, a source that would be subject to PSD permitting requirements because of a project's potential GHG emissions, but that would be willing to reduce emissions from the source or project to avoid those requirements, might not

[46] Previously in this preamble we refer to the two-step phase-in thresholds 75 FR 31516.

[47] We may alter this policy in final response to address the Courts' decisions in *National Mining Association* v. *EPA,* 59 F.3d 1351 (D.C. Cir.1995) and *Chemical Manufacturers Ass'n* v. *EPA,* No. 89–1514 (D.C. Cir.1995).

[48] *See* 76 FR 38748 (2011) (promulgating Tribal minor source rule).

[49] The EPA recently increased the number of areas in which it is the PSD permitting authority. On December 30, 2010, the EPA imposed a partial PSD FIP for GHGs in some jurisdictions in the Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan. Once that FIP became effective, the EPA became the GHG PSD permitting authority for seven states: Arizona: Both Pinal County and Rest of State (excluding Maricopa County, Pima County, and Indian Country), Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In addition, the EPA has long been the PSD permitting authority in a few other states, in Indian country, and in some areas of the Outer Continental Shelf.

have a viable permit mechanism for committing to these emissions reductions and making them enforceable. Thus, we are proposing to fill this gap in federal regulatory authority, because we believe doing so is important to our GHG phase-in efforts and permitting authorities' ability to manage their GHG permit workload (including our ability to efficiently issue GHG permits), and because we believe that synthetic minor limitations for GHGs can result in increased environmental benefit.

We believe that synthetic minor limits for GHGs provide a valuable mechanism to help manage GHG permitting burden and potentially reduce GHG emissions, and that such limits should generally be available as an option for sources that would prefer to take a legally and practicably enforceable limitation on GHG emissions in order to avoid major source permitting requirements. Before the Tailoring Rule, state and local reviewing authorities predominantly issued synthetic minor permits to sources, even when the EPA was the permitting authority for the PSD permits. State and local agencies used their SIP-approved minor NSR permit authority, or in some instances their Part 70 permit authority or their federally enforceable state operating permit program, to issue permits to a source that requested synthetic minor permit restrictions. Recently, the EPA assumed GHG PSD permitting authority for a number of jurisdictions.[50] In many of these jurisdictions, as well as jurisdictions in which the EPA has long been the PSD permitting authority, state, local and tribal agencies may lack mechanisms to create restrictions on a source's potential to emit GHG emissions. This could occur if their minor NSR program regulations do not include GHG emissions or perhaps if it only includes GHG emissions on a mass basis, and if they do not have any other legal mechanism under which they could issue a synthetic minor limit for GHGs. As we noted in the proposed Tailoring Rule, states may but are not required to regulate GHG emissions through their minor NSR programs. Accordingly, if a gap in minor NSR permitting authority exists it may continue to exist. On the other hand, these states may have other viable mechanisms for issuing synthetic minor limits for GHGs, which might alleviate the potential synthetic minor permitting gap.

To better understand the extent of state, local and tribal authorities' synthetic minor GHG permitting authority, we request comment on whether there is a minor source permitting gap in areas subject to EPA permitting authority for PSD permits for GHG. For each state in which the EPA is the GHG PSD permitting authority, we request information on the states' current efforts to interpret or amend their minor NSR permit authority to include GHG emissions, and on other mechanisms that may be available to create synthetic minor limitations on a source's GHG emissions. If there is a gap in either permitting authority or available mechanisms for issuing synthetic minor permits for GHGs, we request input on how that gap could best be filled. We are also requesting comment on whether there are sufficient permitting mechanisms and permitting authority to create GHG synthetic minor limitations in areas subject to a SIP-approved PSD permit program for GHGs. If a gap exists outside of federal GHG PSD permitting areas, we request suggestions for ways to address that gap.

5. What are the benefits to a federal GHG synthetic minor permit program?

A federal GHG synthetic minor permit program will increase EPA's GHG permitting capacity and provide valuable knowledge and experience that the EPA can use to develop effective streamlining methods that assist in the EPA's phase-in of the GHG PSD and title V permit programs to statutory levels. It will also assist the EPA in managing the GHG permit workload for sources already potentially subject to permitting at existing applicability thresholds, and may result in enhanced environmental protection compared to permitting a source as a major source through PSD and/or title V.

We believe that creating federal authority to issue synthetic minor permits to restrict a source's GHG PTE will decrease the long term permit burden on the EPA (and eventually reviewing and permitting authorities if they assume the role for PSD and/or title V permit issuance) by allowing sources to avoid PSD permitting when their actual emissions will not exceed the major source applicability threshold and the subject to regulation thresholds. In addition, such federal authority could reduce state and federal title V permitting burdens, because a PTE limit may be structured in such a way that it also allows a source to avoid the need to undergo title V permitting. We believe that the cost and level of burden for sources applying for a synthetic minor permit, and for permitting authorities to issue the permit, are generally far lower than issuing either a PSD permit or a title V permit. We request information about permitting authorities' and sources' experiences in this regard.

Moreover, the ability to apply for synthetic minor permits can result in greater environmental benefits than those obtained through a PSD permit, because it creates an incentive for sources to reduce emissions to levels below the applicability thresholds. For example, to accommodate a need for an increase in capacity, suppose a source has the option of either modifying an old, inefficient existing emissions unit to increase its capacity, or adding a new, high efficiency, lower emitting emissions unit. Under the federal PSD regulations, the post-change emissions for a new emissions unit are equal to that unit's PTE, while the source may use the projected actual emissions to estimate post-change emissions for the existing emissions unit. Suppose the source only operates 16 hours a day. If the source modifies an existing emissions unit, it may project its emissions using the anticipated 16 hours of operation. In contrast, unless the source can obtain a legally and practicably enforceable restriction on its hours of operation, to determine its PTE, it must calculate emissions for the new emissions unit assuming a full day (24 hours) of operation. As a result, PSD may be triggered for the addition of the new emissions unit, while PSD may not be triggered for the modification of the existing unit. Depending on the cost of emissions controls, and the delay in obtaining the preconstruction permit, the source may choose to modify its existing emissions unit, rather than install the environmentally preferable new emissions unit if it cannot obtain a PTE limit. Providing the EPA the ability to issue synthetic minor permits for GHG emissions gives the EPA a tool to avoid this outcome.

Finally, because we believe that synthetic minor permits generally require fewer administrative resources than full PSD permitting, establishing this synthetic minor program allows permitting authorities to focus greater resources on larger sources that, for whatever reason, cannot or do not want to restrict the emissions to lower levels.

Accordingly, for all the reasons described here, as part of the EPA's effort to phase-in the permitting requirements for GHGs, the EPA proposes to add authority to issue synthetic minor permits to sources for which the EPA, or its delegated agent, is the GHG PSD permitting authority. We propose to add the authority to issue CO_2e-based synthetic minor permits to sources whose potential emissions are above the statutory major source

[50] *See* FN 33 above.

threshold (*i.e.,* 100 or 250 tpy GHG) on a mass basis or the subject to regulation thresholds on a CO_2e basis.

We request comment on our conclusion that a federal synthetic minor permit program will assist in the EPA's efforts to phase-in the GHG permit program and efficiently manage its GHG permitting resources. We also request comment on our conclusion that synthetic minor permits can achieve enhanced environmental protection.

We also note that a synthetic minor limit on GHG emissions could further reduce administrative burdens under the title V permitting program for two reasons. First, as long as the title V GHG applicability threshold is equal to or higher than the PSD threshold, any synthetic minor limit that establishes GHG emissions below the PSD threshold would also prevent such sources from becoming title V sources based on their PSD major source status and/or applicable PSD requirements for GHGs. Second, if the synthetic minor permit restricts GHGs below the subject to regulation threshold for title V, such sources would not qualify as title V sources because of their GHG emissions alone. Of course, if such a source qualifies as a title V source based on their emissions of a non-GHG pollutant or based on title V applicable requirements, that source would still be required to comply with those title V obligations, regardless of the synthetic minor limit for GHGs.

6. What is the legal rationale for EPA's GHG synthetic minor source permitting authority?

Our authority to issue GHG synthetic minor permits arises from the fact that, but for the Tailoring Rule, the sources eligible for this type of permit would qualify as ''major emitting facilities'' under CAA section 169 because they emit or have the potential to emit more than 100 or 250 tpy GHGs on a mass basis, depending on the source category. As a result, we interpret CAA section 165 to convey to PSD permitting authorities, including the EPA, the legal authority to issue preconstruction permits to these sources. We note that we do not expect that sources at or near the 100/250 tpy levels would seek such permits at this time, since such sources are unlikely to trigger PSD under the current applicability tests. Instead, we expect that larger sources would avail themselves of this option.

Although CAA section 165 by its terms authorizes the EPA to issue permits to major sources, and sources to whom we issue a GHG synthetic minor source permit are, in many instances, not major sources, we propose that under the present circumstances, CAA section 165 authorizes the EPA to issue these permits. As noted, these sources would be major sources but for the Tailoring Rule, and as explained in that rule, the administrative burden associated with immediately implementing the PSD program at statutory levels for GHGs would have crippled the program. Thus, we decided to tailor the program and phase-in the permitting requirements to ensure that the PSD permitting program would be administrable for GHGs. Similar to the approach in the Tailoring Rule, we view the GHG synthetic minor program as another tool to help ensure that the PSD program for GHGs can be administered in an effective and efficient manner. Because the GHG synthetic minor program will have those effects, CAA section 165 may be read to authorize it. CAA section 301(a)(1), which authorizes the Administrator ''to prescribe such regulations as are necessary to carry out his functions under [the CAA],'' provides additional authority.

7. What changes would EPA make to the PSD regulations to allow EPA to issue GHG synthetic minor permits?

We are proposing to change both the federal PSD permitting program in 40 CFR 52.21 and the federal minor NSR program in Indian country in 40 CFR Part 49. For the federal PSD permitting program, we propose to add a new § 52.21(dd) to the existing PSD regulations. The proposed regulatory provisions are similar to the requirements we established in Indian country in 40 CFR Part 49, most particularly at 40 CFR 49.158. The proposed provisions address permit application and permit content requirements, as well as requirements for monitoring, recordkeeping and reporting, and public participation. We request comment on any additional provisions that may be needed to establish a GHG synthetic minor permitting program in 40 CFR 52.21, and on any additional changes to the proposed regulatory text that might be required. In addition, we request comment on a number of specific provisions of the proposed regulatory language relating to the definition and use of an emissions limitation (using the phrase ''which has the effect of limiting'' instead of the terms limit(s) or limitation(s) in proposed provisions 52.21(dd)(2)(i), (5)(ii)(b), and (5)(v)(a)); two options for addressing the determination of application completeness (see different deadlines and processes for finding completeness in proposed provisions 52.21(dd)(4)(ii) and (iii)); and the appropriate procedures, if any, to include for administrative review (see proposed provisions 52.21(dd)(4)(vii) and (7)(iv)). Finally, we would also amend the existing regulations in Part 49 to ensure that we have synthetic minor permitting authority for GHG sources located in Indian country. Amending our existing minor source authority for Indian country to add GHG synthetic minor authority would retain all synthetic minor authorities for Indian country within one rule. We believe this would be easier for sources in Indian country to implement, but we request comment on whether we should instead limit the proposed changes to only 40 CFR 52.21.

C. Redefining Potential To Emit and Source Category Specific PTE

This section discusses our current thinking on developing category specific PTE rules or guidance and requests comment on the appropriate categories and requirements. In addition we are also exploring a novel approach that would provide an individual source, in any of multiple source categories, a way to obtain streamlined, as well as legally and practicably enforceable restrictions, on the source's hours of operation. We outline and request comment on a potential approach for creating such a rule; however, we do not intend to finalize this approach in this rulemaking.

As explained in the Tailoring Rule, because the PSD and title V applicability are based on PTE, rather than on actual emissions, they could sweep enormous numbers of sources into the PSD and title V programs even though those sources' actual emissions are far below the applicability thresholds. For example, sources that operate for only part of the year, but that have no legally and practicably enforceable limitation on their operating hours, must calculate their PTE on the basis of the amount of emissions that would result if those sources did operate, and therefore emit, on a year-round basis (8760 hours per year). Our proposed synthetic minor rule would give sources the option to accept legally and practicably enforceable limits on their operations by, for example, agreeing to limit the hours the sources operate and complying with recordkeeping, monitoring, and reporting requirements to ensure that these limits are enforceable as a practical matter. As we have explained, the issuance of synthetic minor permits to individual sources benefits the GHG phase-in program, but we would like to continue to explore methods that can reduce the number of individual permits a reviewing or permitting

authority need to issue. Therefore, in addition to individual minor source permitting, we continue to explore adopting, or encouraging state permitting authorities to adopt, rules for source categories that we expect include large numbers of sources whose actual GHG emissions are well below applicability thresholds, but which, absent legally and practicably enforceable limitations, have PTE above those thresholds.

As we noted in our proposed Tailoring Rule, the first step necessary to develop a source specific PTE regulation or guidance is to identify source categories that are generally conducive to a streamlined PTE approach. 74 FR 55321. In selecting one or more source categories, one consideration is how to address the possibility that the GHG applicability thresholds could change in the future. Today, we have more information on sources with a potential to emit 100,000 tpy or more CO_2e, and may be better situated to propose a source category specific PTE rule for a one of these source categories, in the nearer term. We have less information about smaller sources, and developing a PTE rule will require significant additional information collection, and technical analysis.

Source category PTE rules or guidance continue to offer the opportunity for reducing administrative and permitting burden related to sources of all sizes. We are broadly soliciting information on source categories with sources at all levels of emissions, ranging from sources with actual emissions below the PSD and title V statutory thresholds to those that are just below the Steps 1 and 2 thresholds or the thresholds under consideration for this rulemaking. Therefore, we request comment on all source categories that would be candidates for creation of a PTE-specific rule or guidance. Candidates include source categories that currently have PTE substantially higher than their actual emissions, so that, if we were to revise the thresholds to fall below their PTE but remain above their actual emissions, a rule or guidance that adjusted how sources in those source categories calculate PTE could allow them to fall below the revised thresholds. For instance, we request comment on the usefulness of a PTE regulation for natural gas fired boilers that use a limited amount of fuel. As another example, we solicit comment on whether this approach might be useful for sources whose only emissions units are metered, natural-gas fired units with actual GHG emissions below the relevant applicability thresholds, which because of their metering are able to track and determine their GHG emissions on a continuous basis. This option would essentially allow sources to determine PTE with reference to their actual emissions based on actual fuel use. Conceptually, this option would likely be available for such metered sources that have historically always had emissions below the applicability thresholds and that will maintain and operate their meters on a going-forward basis. For such sources, actual GHG emissions can be continuously determined by monitoring their fuel use so that they remain below the applicability thresholds, as well as comply with recordkeeping and reporting requirements.

For any source category identified in comments, we specifically solicit information on how the source category should be defined, typical hours of operation over a year and whether those vary by, for example, season, production cycle, or over a day, and information on typical emissions. We specifically request input on what sorts of GHG-emitting source categories may only operate seasonally or otherwise have a limited production time—*e.g.,* limited number of shifts, operate only during day-time hours, operate only in the evenings, or emit emissions only from heating during winter months—or have physical restrictions on their operations that might make them well suited for a PTE rule or guidance. We request comment on the time period that reflects these sources' maximum historical operations, which we could use to establish, whether through guidance or rulemaking, the PTE for sources in those source categories. We also solicit comment on what type of documentation would be necessary to demonstrate that sources in a source category have a history of limited operations. For example, would it suffice for sources to demonstrate a 5 or 10 year history of limited actual hours of operation? Suppose a representative set of sources in a source category has records documenting that they operated only two, 8-hour shifts at their facilities for the past 10 years, and that when workers are not working, emissions units are not running. Alternatively, suppose a representative set of sources in a source category has records that show that they only operate during summer months, and that the longest they have operated in the summer is for 4 months. In such circumstances, could the EPA interpret, through guidance or rulemaking, PTE for sources in that source category to reflect that maximum level of actual operation?

We are also exploring the development of a streamlined method that reduces the permitting burden for sources that have historically operated with reduced hours of operations and are willing to accept an hourly limit at or below the maximum level of historical operation. The purpose of such a rule would be to create a legal mechanism by which sources in at least certain types of source categories could take legally and practicably enforceable limits on hours of operation without having to go through the more burdensome process of obtaining individual synthetic minor permits. Rather, we contemplate that under such an approach, a source would report and document its historical maximum hours of operation to EPA in some way, and accept a legally and practicably enforceable limit to operate at or below that level, along with obligations designed to ensure enforceability, such as recordkeeping, reporting, and monitoring requirements.

In order to develop our thinking on this new approach, we are asking for comment on several specific issues. We request comment on whether such a rule would be helpful to permitting authorities in reducing GHG permit burden. In addition, we request comment on whether hours of operation is an operating parameter that does not need source specific limitations to assure compliance. Have permitting authorities included hours of operation restrictions in numerous synthetic minor permits? What success or difficulties have permitting authorities experienced in enforcing hours of operation restrictions through synthetic minor permits? Have terms and conditions of such permits been uniform within or between source categories?

Additionally, we are requesting input on whether such a rule should target specific source categories, or be made broadly available to all source categories, and on what types of GHG-emitting source categories may only operate seasonally or have a limited production time. We request comment on the appropriate structure and requirements for such a rule. What sorts of application requirements, permit limits, and recordkeeping, monitoring, and reporting have permitting authorities required for such hourly limits? What time period adequately reflects maximum historical operations, for purposes of determining a restriction on future operations?

We also request comment on mechanisms the rule should provide to ensure that the source does not exceed any limitation on hours of operations

that it agrees to accept. Finally, we request comment on whether such a process can be rigorous enough to maintain the necessary integrity in PTE calculations, and made legally and practicably enforceable through reporting, monitoring, and ongoing recordkeeping requirements, but streamlined when compared to the burden of issuing and obtaining an individual synthetic minor permit.

Again, we are just requesting comment in this action on the idea of developing a rule to voluntarily restrict hours of operation across multiple source categories and we are not proposing a specific rule at this time. If, after reviewing comments, we determine that this is a viable approach for streamlining GHG permitting, we may proceed to propose a specific rule in the future.

D. General Permitting for GHGs

1. What is a general permit?

A general permit is a permit that the permitting authority adopts once and then applies identically to each source that requests coverage and meets the specific eligibility requirements. General permits are best suited for the regulation of sources that perform the same or similar operations, emit similar air pollutants and are subject to the same limitations, standards and requirements. General permits are a mechanism that provides for greater efficiency in issuing required permits, thereby saving costs to both the source and the permitting authority.

As noted in the following, some states have programs that authorize general permits. These programs show very clearly that there are benefits to using general permits. The issuance process for the permit is relatively simple and streamlined. The applicable requirements for these sources have already been identified for the applicant in both the application and the permit. The applicant knows, prior to application submittal, what conditions the permit will contain. In addition, public review is simplified. The public review process for general permits occurs before the general permit is finalized, rather than on a permit by permit basis.

In the context of GHG, the issuance of PSD or title V general permits would promote more efficient treatment of GHG-emitting sources that would be subject to permitting, and allow the expeditious expansion to more GHG-emitting sources while protecting those sources and the permitting authorities from undue burden.

2. What is the Legal Authority for General Permits?

The CAA gives the EPA the authority in section 504(d) to issue general permits for title V sources, and the EPA has regulations in place to create general permits for title V sources. Although there is no provision in the CAA that expressly authorizes the use of general permits in the PSD program, the DC Circuit, in the *Alabama Power* case, recognized that ''[c]onsiderations of administrative necessity may be a basis for finding implied authority for an administrative approach not explicitly provided in the statute'' and expressly identified general permits as an alternative to the exemptions that were at issue in that case. *See* 636 F.2d at 360. Further, courts have recognized the EPA's authority to use general permits under section 402 of the Clean Water Act without an express provision authorizing such general permits. *Environmental Defense Center* v. *EPA,* 344 F.3d 832, 853 (9th Cir. 2003) (''General permitting has long been recognized as a lawful means of authorizing discharges.'') (citing *NRDC.* v. *Costle.,* 568 F.2d 1369, 1381 (DC Cir. 1977)); *NRDC.* v. *Train.,* 396 F. Supp. 1393, 1402 (D.D.C. 1975) (The EPA has ''substantial discretion to use administrative devices, such as area permits, to make EPA's burden manageable.'').

3. Have the states used general permits?

Many states have taken advantage of the ability to use general permits. In reviewing state programs, we have found that though the concepts are similar, the structure and content of the various programs is quite diverse. For example, the New Jersey Department of Environmental Protection (NJDEP) has developed a general permit program (GP–017) [51] that allows for the construction, installation, reconstruction, modification and operation of boilers and heaters less than 5 MMBTU/hour. NJDEP defines a general permit as a pre-approved permit and certificate which applies to a specific class of significant sources. By issuing a general permit, NJDEP indicates that it approves the activities authorized by the general permit, provided that the owner or operator of the source registers with the Department and meets the requirements of the general permit. If a source belongs to a class of sources which qualify for a general permit and the owner or operator of the source registers for the general permit, the registration satisfies the requirements of NJAC 7:27–8.3 [52] for a permit and certificate.

Ohio's Division of Air Pollution Control (DAPC) also has developed model general permits-to-intall and model general permits-to-install and operate for select sources in Ohio. The regulations for general permits can be found in OAC Rule 3745–31–29. Ohio states that a general permit is the same as any permit-to-install or permits-to-install and to operate that DAPC issues; the only difference is that all the terms and conditions of the permit have been developed in advance. This is referred to as the ''model general permit.'' Potential applicants can review the model general permit qualifying criteria, terms and conditions, and if they believe they qualify, they can complete the application and sign the qualifying criteria document. The DAPC will review the applicants' information to confirm that they meet the qualifications, and then issue the general permit to the applicants.

4. What steps has the EPA made toward developing general permits?

In the context of streamlining the permitting process for GHGs, the EPA is considering various methods for developing general permits. As a procedural matter, the EPA is evaluating the possibility of proposing an enabling rule to enable the development of PSD general permits for GHG emitting sources. This rule would enable the EPA to create and implement PSD general permits for GHG emissions only for selected source or emissions unit categories. The enabling rule would lay out the basic foundation for general permits. It would identify the general provisions that would be found in all EPA-issued general permits, the criteria and process for establishing a general permit, and discuss the rationale and legal basis for a PSD general permit for GHGs. The enabling rule would also establish the process for the creation of general permits for the EPA's use where the EPA is the GHG permitting authority and define mechanisms by which states could leverage federal general permits to streamline the permitting processes for sources that would trigger PSD for only their emissions of GHGs.

We are also considering the overall criteria for determining the source or

[51] *http://www.state.nj.us/dep/aqpp/downloads/gp17.pdf.*

[52] The permittee shall not construct, reconstruct, install, or modify a significant source or control apparatus serving the significant source without first obtaining a preconstruction permit under N.J.A.C. 7:27–8. [N.J.A.C. 7:27–8.3(a)].

The permittee shall not operate (nor cause to be operated) a significant source or control apparatus serving the significant source without a valid operating certificate. [N.J.A.C. 7:27–8.3(b)].

emissions unit categories for which we may develop the first general permits. Our initial inclination, on which we solicit comment, is that we should focus first on GHG-only sources, that is, GHG-emitting sources that do not emit non-GHGs in amounts that would be subject to PSD requirements. This is because complying with PSD for non-GHG pollutants involves analyses and demonstrations, such as a requirement that the source demonstrate that the proposed project will not cause or contribute to a violation of any NAAQS, which inherently are facility and location specific. For GHGs, BACT is the primary substantive PSD permitting requirement, and we believe that BACT can more readily be established for a source or emissions unit category, thus making the general permit approach feasible for sources and modifications that are major only due to GHG emissions.

We are considering what source and/or emissions unit categories would be good candidates for the first general permits. Even though natural gas-fired boilers range from large high performance boilers for industrial applications to small commercial and residential units for space heating and hot water, sources for which the only or predominant source of GHG emissions are boilers may be good candidates for PSD GHG general permits. Because boilers are widely used throughout industrial and commercial source categories, and can readily be categorized by design, purpose, efficiency and emissions, they present opportunities for significant streamlining through the use of general permits and thereby reductions in administrative burden from PSD permitting. Because the controls for GHGs on natural gas-fired boilers are sufficiently uniform, it seems possible to identify standardized control requirements to include in a general permit without significantly compromising environmental protection.

Even so, it is unclear whether a general permit rule, for boilers or other emissions units, would be a productive streamlining method for the source categories and projects affected by this Step 3 rulemaking. In many cases, boilers or other equipment located at a source or involved in a project will emit non-GHG pollutants in amounts great enough to trigger other significant CAA requirements such as minor NSR, NESHAP and/or NSPS, diminishing the streamlining utility of a PSD general permit for GHG only. We are also mindful that implementation of a general permit program would likely involve regulatory action and a SIP revision at the state or local permitting authority level, which in and of itself imposes administrative costs, and the limited benefits of a general permit program for the source categories and projects potentially covered in this Step 3 rulemaking could be offset by the administrative costs of the SIP revision process. Although we are concerned that GHG general permits for boilers and other common emissions unit categories may not provide enough streamlining value for the source categories affected by this Step 3 rulemaking, we believe such permits may have significant value when we consider smaller sources, especially those with no other emissions units or non-GHG pollutants emitted at significant levels. We are also considering how to incorporate a general permit for GHGs into existing state permitting programs. We are mindful that reviewing agencies generally have construction permitting processes that address all applicable requirements, including minor NSR and major NSR/PSD in an integrated fashion. It would be important to structure the general permit program so as to avoid complicating or conflicting with established permitting processes.

We are also considering further questions, including: (1) Should general permits be available to greenfield sources?; (2) When issuing a general permit for a project/modification what do we do with pollutants other than GHGs?; (3) Can general permits be utilized for projects at any major source or only at sources major only for GHGs?; (4) Are general permits available to both new and modified units?'' (5) ''Are general permits mandatory or optional for states?; (6) What is the process for establishing general permits?; (7) Should states or the public be able to request that the EPA propose general permits for source categories and emissions units, and if so, what is the process for this type of request?; (8) What should the public participation procedures be?; (9) What is the approval or denial process for sources to use a general permit?; (10) What would BACT for a general permit look like?; (11) How would BACT be established?; (12) How would BACT be updated?; (13) What are the Endangered Species Act and environmental justice implications of the general permit?; (14) Should there be a periodic review of the general permit's provisions, and if so, what would it look like?, and (15) Could we develop a process for states to incorporate a general permit program into their SIPs in a way that minimizes the administrative costs of the SIP revision process?

We commit to continue to explore the possibility of general permits by reviewing information that we expect to receive in response to this proposal and the information gathered by permitting authorities through the implementation of GHG permitting. We believe that establishing general permits will require collection of significant category-specific data for various source and emission unit types as well as those that have heretofore generally not been regulated by the CAA (*e.g.,* small furnaces, water heaters, etc.), which could take a significant amount of resources and time.

We request comment on, in addition to the issues described previously, possible sources and source categories that may benefit from general permits, if such permits were only created for addressing GHG emissions, as a streamlining method to assist in the phase-in of GHG permitting. We request comment on the appropriate approach for public review, in particular whether public review of individual uses of a PSD general permit can be satisfied through public participation in the development of the general permit itself or whether each individual use of the PSD general permit requires public participation. We also request comment on whether such a program should be a required minimum element for SIP approved PSD programs, as relevant.

5. General Permits and Title V

We expect many of the issues related to PSD general permits would also be relevant for title V general permits. For example, we would expect title V general permits to be most useful for GHG sources that trigger title V applicability due to boilers, but where sources are subject to other requirements, such as NSR, NESHAP and/or NSPS, the utility of general permits may be limited.

We request comment on experience with title V general permits issued by state and local permitting authorities, including whether permitting authorities have altered application requirements pursuant to 40 CFR 70.6(d)(2), and other means of ensuring that general permits met the goals of title V for streamlined procedures and assuring compliance. Finally, we request comment on whether such a program should be a required minimum element for state Part 70 title V programs, as relevant.

E. Presumptive BACT for GHGs

1. Definition of BACT

The Act defines BACT as:

* * * an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of ''best available control technology'' result in emissions of any pollutant which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 or this Act. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to enactment of the Clean Air Act Amendments of 1990.

CAA section 169(3).

Performing case-by-case BACT determinations can be complicated, resource-intensive and time-consuming. In brief, the top-down BACT process calls for all available control technologies for a given pollutant to be identified and ranked in descending order of control effectiveness. The highest-ranked (''top'') option(s) should be established as BACT unless the permit applicant demonstrates to the satisfaction of the permitting authority that technical considerations, or energy, environmental, or economic impacts justify a conclusion that the top-ranked technology is not ''achievable'' in that case. If the most effective control strategy is eliminated in this fashion, then the next most effective alternative should be evaluated, and so on, until an option is selected as BACT. This analysis should be conducted for each regulated NSR pollutant that is subject to the BACT requirement in a given case. The EPA has broken down this analytical process into the following five steps.

Step 1: Identify all available control technologies.

Step 2: Eliminate technically infeasible options.

Step 3: Rank remaining control technologies.

Step 4: Evaluate most effective controls and document results.

Step 5: Select BACT.

2. What is presumptive BACT?

Presumptive BACT is a potential streamlining approach that involves the development of a standardized BACT for certain emissions units. Presumptive BACT would create ways for specific categories of permitted emissions units to move from a system under which determinations are made on individual permits on a case-by-case basis, to one where BACT is determined for common types of equipment, which could be applied to individual permits with little to no additional revision or analysis. In general, the EPA believes that presumptive BACT could be implemented on a broad basis for specific emissions units where there are well defined and similar types of emissions units, uniformity in process/emissions unit design and function, and well defined GHG control technologies. Reviewing agencies could adopt presumptive BACT, possibly including model permit language and monitoring, reporting and recordkeeping requirements, to streamline the BACT analysis for GHGs within their own established permitting process.

The EPA has previously introduced the concept of presumptive BACT to streamline permitting for desulfurization projects at refineries as well as in other instances,[53] and some state permitting authorities have adopted similar approaches.[54] Based on our understanding of the types of sources that will become subject to PSD if GHG emissions are regulated at levels below the thresholds currently contained in the Tailoring Rule, we believe the presumptive BACT process could offer significant streamlining benefits. Such streamlining benefits would arise because many of the sources that would become subject to BACT at lower GHG emission levels will likely have very similar emissions producing equipment, and we believe there would be little variation across sources with respect to the cost, energy and environmental considerations in the BACT decision.

As discussed in the following, the EPA has expressed interest in soliciting comments on the potential use of presumptive BACT for GHG permitting. It should be understood that presumptive BACT would be only an optional means to streamline the top-down BACT process by pre-evaluating what could constitute BACT for specific categories of similarly-situated emissions units. It should also be understood that this would only be available to address the GHG emissions from those units, and that the pre-construction permitting process would not be affected in any other way.

Presumptive BACT would add another option for sources to achieve BACT requirements and provides additional benefits for the source and the permitting authority through streamlining of the permit process. In actual implementation, the choice of a presumptive BACT option would reduce burdens currently associated with conducting individualized, top-down BACT analyses for each source requiring a PSD permit. Nonetheless, there are several considerations to explore before we can implement a presumptive BACT approach including the role of presumptive BACT in a case-by-case decision framework, the role and timing of public review, and preserving BACT's technology-forcing role within a presumptive BACT framework.

3. How the EPA Could Consider Implementing Presumptive BACT

As noted previously, the CAA requirement for BACT, found in section 165(a)(4), mandates that BACT determinations be made for each regulated pollutant on a ''case-by-case basis.'' Accordingly, the EPA would like to develop a process that benefits from the efficiencies that presumptive BACT would provide while allowing for issuance of individual PSD permits. In the proposed Tailoring Rule, the EPA discussed potential options to explore presumptive BACT as an alternative to the current case-by-case nature of conventional BACT. In that discussion and in subsequent consideration by the agency, two potential ways in which to implement a presumptive BACT program have emerged: As an alternative method of completing a BACT analysis in an individual permitting action or as a way to eliminate the need for an individualized BACT analysis for all permits in a particular category.

The first approach would develop, through notice-and-comment rulemaking or through permitting guidance, a presumptive BACT level for sources in a particular source category that subsequently could be applied and assessed in individual permitting actions. Under such an approach, while the top-down analysis for an individual

[53] *See* Memorandum, ''BACT and LAER for Emissions of Nitrogen Oxides and Volatile Organic Compounds at Tier 2/Gasoline Sulfur Refinery Projects,'' from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors (January 19, 2001).

[54] For example, Wyoming has a minor source permitting program that includes a BACT analysis, and they use a presumptive BACT process for issuing minor source permits to a particular source category—oil and gas production facilities. *See* Permitting Guidance for Oil and Gas Production Facilities, Wyoming Dept. of Environmental Quality, Air Quality Division (August 2007 revision).

permit would be fulfilled by a request to include the presumptive BACT limit, there would still be an opportunity for permitting authorities and the public to examine individual permits to assess whether there are significant case-specific energy, economic, and/or environmental impacts that would require adjustment of the presumed limit for that particular source. This form of presumptive BACT would create a rebuttable presumption that the emissions covered by the particular source's BACT limit will, in fact, be controlled to the maximum degree that can be achieved. This presumption shifts the burden to the permitting authority or other interested parties to produce credible evidence that the application of presumptive BACT to that particular source would not comply with BACT requirements. If credible evidence were produced, then the source would either be required to produce evidence sufficient to show that the presumption is the best achievable control technology or to conduct an individualized top-down BACT analysis. Whatever mechanism the EPA may ultimately choose to implement presumptive BACT, if any, the critical and essential component of a successful BACT analysis will continue to be a strong record supporting the decisions reached by the permitting authority, as explained in the PSD and Title V Permitting Guidance for Greenhouse Gases (March 2011).

While such an approach could streamline the BACT determination process to some extent, we are concerned that those streamlining benefits could be negated given the prospect that such presumptive BACT determinations would, as a result of permitting authority review and public comment, still have to be reviewed for numerous individual sources. Accordingly, the EPA has also considered a system in which presumptive BACT levels for a specific category of emissions units would be developed through notice-and-comment rulemaking but then applied to individual sources in that category without requiring permitting authorities to individualize the BACT determination or allowing for public comment on whether presumptive BACT levels should apply to an individual source. While, as noted in the following, some have argued that such an approach would not strictly adhere to the individual case-by-case BACT determinations envisioned in the CAA, even if that is the case, maintaining case-specific BACT determinations may well be impractical given the significant increase in new sources that would likely be brought into the PSD program when GHG permitting thresholds are reduced. Moreover, the DC Circuit, in the *Alabama Power* case previously discussed, stated that courts ''frequently uphold streamlined agency [regulatory] approaches or procedures where the conventional course, typically case-by-case determinations, would, as a practical matter, prevent the agency from carrying out the mission assigned to it by Congress.'' 636 F.2d at 358. The Court recognized that such non-individualized streamlining measures may be needed when time or personnel constraints or other practical considerations ''would make it impossible for the agency to carry out its mandate.'' *See id.* at 359. A presumptive BACT approach that does not require individualized, source-specific determinations could well be an important tool to allow the EPA, state and local permitting authorities to carry out the PSD program in as timely and efficient manner as necessary to promote (rather than hinder) control of GHG emissions from the many new, small source categories that would be required to have PSD permits based on their GHG emissions. This approach would preserve opportunities for public participation by taking comment during the determination of presumptive BACT levels for a source category. Although here too, some have argued that this type of presumptive BACT approach, one that does not require individualized, source-specific determinations, would depart from a literal application of the statutory requirements for BACT, even if that is the case, it may nevertheless remain closer to the congressional intent for the PSD program in so far as it would reduce administrative burdens in each permitting action, thus allowing more overall sources to become subject to a PSD permitting program that moves applicability thresholds closer to the statutory levels.

We received many comments on presumptive BACT during the public comment period for the Tailoring Rule. Many commenters supported the concept of presumptive BACT as a means to streamline PSD permitting. Some noted that it would promote consistency in BACT determinations as various permitting authorities gain experience with GHG permitting. Some suggested that it would be useful for common combustion sources, and at least one indicated that it would be particularly justified for natural gas-fired equipment. Several included recommendations for specific industrial sectors. A number of the supportive commenters also recommended that the source have the option to use presumptive BACT or to conduct a case-by-case BACT determination.

Some commenters opposed presumptive BACT. A few indicated that it would not be flexible enough to take into account source-specific factors. Others asserted that it is contrary to the requirements of the Act for a case-by-case BACT determination and opportunity for public review. Some noted that it would dampen the technology-forcing role of BACT, and at least one suggested a periodic update not less than every 5 years.

The EPA requests comment on the possible approaches to presumptive BACT discussed previously. We request comment on whether the first approach, where each use of presumptive BACT would be subject to permitting authority review and public comment, would offer significant streamlining value. We also request comment on our legal authority to implement each approach, particularly on the applicability of *Alabama Power* principles to the second approach, which does not authorize individualized, source-specific determinations.

4. Possible Impediments to Presumptive BACT

a. Public Comment Processes for Presumptive BACT

The provision of effective and meaningful opportunities for public comment on BACT determinations is an important element of air permitting process provided for in the CAA. In the context of the two presumptive BACT approaches explained previously, the EPA or a state agency could provide opportunity for public participation either in individual permitting actions to allow the public to rebut the presumption that a pre-determined BACT limit applies to the specific source under consideration, or in determining the presumptive BACT levels for a source category. The EPA requests comment on the public participation approaches that would be appropriate to support presumptive BACT determinations. For example, is it sufficient to provide for public review and comment only during the rulemaking to establish a presumptive BACT level or does the case-by-case nature of BACT require comment for individual permitting actions? Even if we follow the approach of establishing a presumptive BACT limit through notice-and-comment rulemaking and limiting public input on individual

permitting actions, are there circumstances in which public comment might also be warranted for those individual permitting actions the presumptive BACT limit? If so, what are they? If we follow the approach of allowing public input on individual permitting actions that use presumptive BACT, are there ways in which the public comment might be limited to recognize more streamlining benefits?

b. General Permits

The EPA is particularly interested to consider pursuing presumptive BACT as a streamlining approach in cases where there would be similar BACT outcomes in multiple permits due to similar source characteristics and available control options. General permits, which are discussed in the previous section, provide one context to implement this. General permits are particularly useful in situations where source operations are highly consistent and relatively simple across a source category. General permits typically work best where sources in the category are subject to the same applicable air regulatory requirements, including those associated with criteria pollutant and air toxics regulatory programs.

We are particularly interested to consider opportunities to develop presumptive BACT options to complement potential general permitting approaches addressing GHGs. In the absence of a presumptive BACT approach, general permits addressing GHGs may have limited streamlining value in light of case-by-case conventional BACT determination needs. Accordingly, we request comment on opportunities for using presumptive BACT approaches in the context of general permits. In addition, we request comment on potential source categories or types of emission units that may be particularly well-suited for a general permit and presumptive BACT approach due to similarities in source characteristics and available GHG control options. We also request comment on whether presumptive BACT approaches for GHGs should be considered for source categories and types of emission units that may not be feasible to address using a general permit approach.

c. Updating of Presumptive BACT

In general, case-by-case BACT determinations allow for the continual evolution of BACT requirements over time and are generally referred to as ''technology forcing,'' in so much as available controls identified in prior permits are considered in each subsequent BACT determination and the specific facts of subsequent actions may support application of a top-ranked control technology that was eliminated in prior actions. However, the EPA recognizes that application of presumptive BACT to a category of sources over many permitting decisions may diminish the technology forcing effects of PSD. Updating of BACT is an important concept to consider in the context of developing a presumptive BACT option, and the EPA is interested in options that would help maintain advances in control technologies.

As previously explained, the conventional top-down BACT process incorporates continual updating of the BACT for each type of emission unit through the analysis that occurs to ensure that the most current BACT is used. To provide streamlining opportunities, the presumptive BACT process would likely need to incorporate some form of updating mechanism to ensure that the BACT remains current over time. We have identified several different approaches by which such updating could be accomplished. One approach would be for the EPA or a state agency to periodically review and consider updates to the presumptive BACT option established for a certain source category or type of emission unit. For example, there could be a requirement to update presumptive BACT on a set time interval (such as every 3 or 5 years).

Another approach could be to link a presumptive BACT determination to a standard established through some respected standard-setting programs so that the presumptive BACT level would automatically update periodically in conjunction with updating process already used in established standard-setting programs, as discussed in the following examples. One option would be for the EPA or a state agency to set presumptive BACT at the same levels used in equipment energy efficiency standards established by government agencies or other respected standard-setting bodies. For example, the U.S. Department of Energy (DOE), pursuant to the Energy Policy and Conservation Act, promulgates energy efficiency standards for industrial and commercial boilers.[55] These periodically-updated equipment energy efficiency standards could be used as the basis for presumptive BACT in cases where such standards exist. Similarly, it may be appropriate to use ENERGY STAR equipment certification as a basis for presumptive BACT. Whereas appliance and equipment energy efficiency standards usually provide the ''ground floor'' requirements for performance of new energy consuming equipment, ENERGY STAR certification specifications establish minimum performance requirements for high-efficiency, lower emissions equipment within selected product categories. The ENERGY STAR program, administered by the EPA in partnership with the DOE, establishes voluntary product and equipment energy efficiency specifications for certain products and equipment in an effort to transform the market for manufactured goods by expanding the availability and visibility of energy-efficient products. Commercial and residential products can earn the ENERGY STAR label by meeting the energy efficiency requirements set forth in ENERGY STAR product specifications.

Accordingly, ENERGY STAR equipment specifications include energy efficiency performance requirements that exceed DOE appliance and equipment standards. For example, to qualify for ENERGY STAR certification, residential boilers must have annual fuel utilization efficiency (AFUE) ratings of 85 percent or greater.[56] This compares with DOE boiler energy efficiency standards established in 2007 that range from 80 to 83 percent.[57]

The EPA requests comment on approaches for ensuring that presumptive BACT options are periodically reviewed and refreshed. We also request comments on the feasibility and potential configuration of approaches that connect presumptive BACT to equipment energy efficiency standards or certifications or other external factors. In particular, it would be helpful to receive comments on the role DOE industrial equipment and appliance energy efficiency standards and/or ENERGY STAR certification for industrial and commercial equipment play in the context of presumptive BACT. In addition to the specific comments requested previously, the EPA seeks overall comments on the use of presumptive BACT, including suggestions for how such limits could be established, updated and used consistently within the requirements of the CAA, including requirements for a top-down, case-by-case BACT determination process. The EPA invites comments on whether presumptive

[55] *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnaces_boilers.html.*

[56] *http://www.energystar.gov/index.cfm?fuseaction=find_a_product.showProductGroup&pgw_code=BO.*

[57] *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/furnaces_boilers/furnaces_fr_111907.pdf.*

BACT options should be advanced through rulemaking or through guidance. Comments would also be useful regarding considerations that should affect whether presumptive BACT approaches could be used to address only existing units or new units. The EPA also encourages comments on the respective roles of state, local and tribal air agencies relative to that of the EPA in establishing presumptive BACT options.

F. Title V Empty Permits

In the Tailoring Rule, we identified a possible exclusion for ''empty permits'' (which are, as noted, permits issued to a source that is not subject to any applicable requirement for any pollutant) as a potential means for alleviating the potential burden of title V permitting for GHG sources. In the Tailoring Rule we described an ''empty permit'' as ''a permit issued to a source that is not subject to any applicable requirement for any pollutant.'' [58] Empty permits may occur because the applicability for title V is in part based on major source status, yet there may not be any applicable requirements that apply. Since the principal purpose of title V is to collect the requirements applicable to the source and assure compliance with those requirements it is unclear whether Congress intended sources, particularly smaller sources, to be subject to title V permitting if there are no applicable requirements for the source. The EPA solicits comments on whether we may, and should, interpret title V as not requiring permits for sources that are not subject to any applicable requirements (as defined in 40 CFR 70.2). The EPA also solicits comments on whether the EPA could adopt such an interpretation through guidance, an interpretative rule (without notice and comment), or only through notice and comment rulemaking, and whether states would, or should, be required to submit program revisions to the EPA for approval in order to exclude such sources from title V permitting.

In the Tailoring Rule, the EPA noted that we anticipated very few if any ''empty permits'' as a result of Step 2. However, there remains significant uncertainty as to the number of ''empty permits'' that would exist if the Tailoring Rule thresholds were significantly lowered. The EPA believes that several SIPs contain generally applicable requirements for sources that would constitute ''applicable requirements'' for many sources that would become subject to title V solely as a result of GHG emissions if the thresholds were significantly lowered. We noted in the final Tailoring Rule that:

> We need to gather more information concerning the potential number and utility of ''empty permits'' for GHG sources, in light of the fact that the need for requirements in title V permits will vary based on the requirements of each SIP, and the fact that some SIPs contain broadly applicable requirements.

Tailoring Rule, 75 FR 31566. Thus, we solicit comments, particularly from states on these issues. For example:

What, if any, SIP requirements would be applicable to sources that would become subject to title V permitting solely as a result of emitting GHG in excess of a lower threshold?

What number (or proportion) of sources potentially subject to title V would be expected to have no applicable requirements under the SIP or other CAA programs?

Is there a threshold below which the number of empty permits would increase significantly, as a result of a corresponding threshold in applicability of SIP requirements?

VII. Request for Comment

We have requested comment throughout this preamble on many aspects of the GHG permitting program and our proposed rulemaking. In this section, we provide a summary of the issues on which we are requesting comment and refer the reader to the preceding sections for our requests on more specific points.

A. Solicitation of Comment on Proposed Step 3

1. General

We solicit comment on all issues described previously in section V of this preamble. In particular we solicit comment from the states as to their current and expected air permit budgets as well as their current and expected future levels of permitting.

In addition, we solicit comment on promulgating lower GHGs thresholds for PSD applicability and on promulgating lower GHGs thresholds at any levels we have analyzed in this rulemaking for PSD and title V applicability. Commenters advocating lower thresholds should support their position with data demonstrating that the permitting authorities have developed the capacity to handle the current and future permitting volume under the existing thresholds, and will be able to handle the additional permitting volume, in a timely manner, that would be required at reduced thresholds. Commenters should also be able to support their positions with data demonstrating that sources have the ability to meet the requirements of the PSD program.

We note that in this rulemaking, we are not re-opening or soliciting comment on the Tailoring Rule's decision to phase in the thresholds, to begin with the Steps 1 and 2 levels, or the legal or policy basis for the Tailoring Rule. By the same token, as noted previously in section V, in this rulemaking, we are relying on the same methodology used in the Tailoring Rule to calculate administrative burdens, and we are not re-opening that methodology or soliciting comment on it.[59] We are simply proposing action and soliciting comment on Step 3 of the phase-in approach.

2. Call for Additional Information Concerning State Burdens

As stated in the Tailoring Rule, the EPA is committed to tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD and title V programs of the CAA. The following questions are structured to help the EPA best assess the status of GHG permitting programs based on the three criteria outlined in the Tailoring Rule, which forms the basis for this action. We request states submit responses to the following questions to the appropriate EPA Regional Administrator within 45 days after the date of publication of this proposal in the **Federal Register**.

General Permitting Burden/Resources

1. Does your state currently have the necessary resources (funding and staff) to run the PSD and title V permitting program as they exist today?

a. If your state is strained for resources please describe the reasons for it? Please list all that apply and provide a short description of the problem providing specific information where possible (i.e., budget cuts of 10 percent during the last year; hiring freeze; loss 3 FTE in last two years).

i. GHG Permitting

ii. Other Permitting Issues (SO_2, NO_2, etc)

iii. Budget cuts

iv. Lack of personnel

v. Other (please specify)

2. If permitting activity were to increase to levels closer to those

[58] Empty permits are different from ''hollow permits.'' A ''hollow permit'' is a permit for a GHG major source that does not contain requirements for GHG emissions, but which contains other applicable requirements for pollutants for which the source is not major.

[59] Although the Tailoring Rule has been challenged in the U.S. Court of Appeals for the DC Circuit, no party has challenged this methodology.

originally anticipated in the Tailoring Rule,[60] would your state have the necessary resources to manage the increased workload?

a. If not, please estimate the level of additional resources (funding and staff) your state would require to handle the increased burden.

3. In providing perspective on the PSD program, consider the following scenarios where your annual number of PSD permitting activity were to increase by 10, 20, 30, 50, 100, and 200 permit actions per year (both new permit applications and modifications included) due to the potential lowering of the current GHG applicability thresholds. When assessing the resources to permit these sources, consider that many of the newly permitted GHG sources under this scenario would likely consist of commercial and small industrial sources whose primary GHG emissions units are small, similarly configured combustion units:

a. How many more full-time employees (FTEs) would your program need to address each of these potential permitting activity increases (i.e., 10, 20, 30, 50, 100, and 200 permit actions per year) in PSD due to GHGs and still meet current PSD permit processing times?

b. How many additional dollars annually to your staffing budget would these additional FTEs equate to?

4. How has GHG permitting affected the permitting process in your state? Please consider the areas listed below and provide specific estimates of the impact GHG permitting has had on your program where possible (i.e., responded to 10 percent more permitting questions than usual).

a. Number of source meetings.

b. Number of daily permitting questions.

c. Number of incomplete permit applications.

d. Training for permitting staff to understand the GHG permitting process.

e. Is your staff unsure of how and when to permit GHG sources?

5. For states where PSD permits for GHG have been issued, how was the burden (monetary and man-hours) compared to a typical non-GHG permit? Please provide an estimate where possible (i.e., an additional 20 hours).

6. In providing perspective on the title V program, consider the following scenarios where your annual number of title V permitting activity were to increase by 10, 20, 30, 50, 100, and 200 permit actions per year (both new permit applications and modifications included) due to the potential lowering of the current GHG applicability thresholds. When assessing the resources to permit these sources, consider that many of the newly permitted GHG sources under this scenario would likely consist of commercial and small industrial sources whose primary GHG emissions units are small, similarly configured combustion units:

a. How many more full-time employees (FTEs) would your program need to address each of these potential permitting activity increases (i.e., 10, 20, 30, 50, 100, and 200 permit actions per year) in title V due to GHGs and still meet current title V permit processing times?

b. How many additional dollars annually to your staffing budget would these additional FTEs equate to?

7. Does your state have an active outreach initiative and the resources necessary to reach out to smaller sources that may not be aware of their obligation to apply for title V or PSD permits due to GHGs?

a. If the GHG permitting thresholds were lowered resulting in additional sources being subject to the PSD and title V permitting programs, how would this affect such initiative? Please be specific about the level of resources necessary where possible.

8. Have the GHG requirements created or added to a backlog of unissued permits?

a. If so, by what amount?

9. Has your state modified its title V fees to cover GHG permitting needs? If not, would your state need to do so if additional sources (i.e., 10, 20, 30, 50, 100, and 200 actions per year) were added to the permitting programs as a result of lowered thresholds?

Streamlining Specific Questions

1. Is your state processing applications through any electronic permitting measures? If not do you plan on implementing an type of electronic permitting?

2. Has your state implemented LEAN techniques to streamline the permitting process? If so, how has this improved the efficiency for permitting actions? If not, do you plan on doing this in the future?

3. Is your state considering any other permitting streamlining technique to help improve the efficiency and reduce the burden associated with permitting of GHG sources? Please list all streamlining techniques under consideration and the expected implementation timelines.

B. Solicitation of Comment on Streamlining Techniques

In section VI of this preamble, we discuss a range of streamlining techniques for GHG permitting. In this action we propose rulemaking to implement two of these techniques at this time concerning PALs for GHGs and creation of federal synthetic minor source permits for GHGs. For the other techniques, we present information on the techniques but propose no rulemaking at this time. We request comment on all these potential streamlining techniques, as discussed in section VII and in the following sections. More broadly, we request comment on other approaches to streamlining that may hold promise to reduce PSD and/or title V permitting burden for sources of GHGs and permitting authorities. Please include as much detail as possible on how such an approach would work, the amount of burden reduction that could be achieved, the specific legal authority the EPA should rely upon for implementing the approach, and whether EPA rulemaking would be required for implementation.

1. Plantwide Applicability Limitations for GHGs

We request comment on our proposal to undertake rulemaking at this time to provide a more flexible approach for GHG PALs. We further request comment on which option we should pursue for this rulemaking, the Major Source Opt-in Approach or the Minor Source Approach, and on how, specifically, we should revise our rules to implement the preferred approach. In our discussion of, and rationale for, GHG PALs in section VI.A of this preamble, we requested comment on many specific, related issues. We again request comment on those issues here.

2. Synthetic Minor Source Permitting Authority for GHGs

We request comment on our proposal to create synthetic minor permit authority, within the existing federal PSD regulations, for the purpose of issuing synthetic minor permit limitations for GHGs. In addition, we request comment on our legal authority for implementing such a program. Finally, we again request comment on other specific, related issues on which we requested comment in the discussion of synthetic minor permit authority in section VI.B of this preamble.

[60] *See* 75 FR 31540.

3. Redefining PTE and Source Category Specific PTE

We request comment on the discussion in this proposal of our current thinking on developing category specific PTE rules or guidance, and on categories for which such a rule or guidance would be appropriate. We also request comment on creating a rule that would allow a source to use historical hours of operation in determining an emissions unit's PTE. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of approaches to PTE in section VI.C of this preamble.

4. General Permits for GHGs

We request comment on the idea of developing a rule that would allow use of general permits for GHG sources, and on possible sources and source categories that may benefit from general permits. We also request information on the experience of state and local permitting authorities with the use of general permits and their potential applicability to GHG sources. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of general permits in section VI.D of this preamble.

5. Presumptive BACT for GHGs

We request comment on the concept of developing presumptive BACT for sources of GHGs, and on possible source categories and emissions units that may be promising candidates for this approach. We request comment on how and when to update presumptive BACT determinations, on the use of presumptive BACT for general permits, and on the appropriate public participation for the development and application of presumptive BACT. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of presumptive BACT in section VI.E of this preamble.

6. Title V Empty Permits

We request comment on the extent to which SIPs contain requirements that would be applicable to sources that would be subject to title V solely as a result of emissions of GHGs below the current thresholds established by the Tailoring Rule, and whether a significant number of sources would have empty permits at different thresholds. We also solicit comment on whether the EPA can, and should, interpret the title V as not requiring ''empty permits,'' and if so whether state program revisions, approved by the EPA, would, or should, be necessary to exclude such sources from title V permit requirements. In addition, we request comment on the other specific, related issues that we discussed and on which we requested comment in the discussion of empty permits in section VI.F of this preamble.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, the EPA submitted this action to the OMB for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

This proposed Step 3 of the Tailoring Rule would continue the phased-in approach begun in Steps 1 and 2. However, we have determined that it would not be appropriate at this time to expand the universe of large sources of GHG emissions that must comply with permitting requirements under the Act, and the proposed rule would not reduce the GHG applicability thresholds or bring more sources into the PSD or title V programs. Thus, the proposed rule would not impose any costs on sources of GHGs to obtain permits or on permitting authorities to issue permits.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. However, if in the context of the final rule we determine that the provisions for PALs and synthetic minors impose new information collection burden, we will adjust the information collection requirements accordingly. The OMB has previously approved the information collection requirements contained in the existing regulations for the NSR and title V programs under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 to the NSR program and OMB control numbers 2060–0243 and 2060–0336 to the title V program (40 CFR Part 70 and Part 71 components, respectively). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (see 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

The proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on any sources (including small entities) to obtain PSD or title V permits or on any permitting authorities (including small entities, if any) to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden on all entities, including small entities, in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. We have therefore concluded that this proposed rule will be neutral or relieve the regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts. In addition while we propose to maintain the current thresholds in this rulemaking, we also solicit comment on lowering the thresholds. If we receive information that persuades us that we should take action to lower the thresholds, we will at that time reassess the applicability of the requirements of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any 1 year. The proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As noted previously, the effect of the proposed rule would be neutral or relieve regulatory burden.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would maintain the existing structure of the PSD and title V programs and would not, therefore, affect the relationship between the national government and the states or the distribution of power and responsibilities among the various levels of government. In addition, the proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on state permitting authorities to issue PSD or title V permits or such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications. There are no tribal authorities currently issuing major NSR permits, one tribe is implementing a title V program based on a delegation agreement under 40 CFR Part 71 and one tribe has recently obtained approval of title V program under 40 CFR Part 70. However, the proposed rule would not change the existing GHG permitting thresholds, and therefore would not impose any additional burden on sources to obtain PSD or title V permits or on permitting authorities to issue such permits. The proposed provisions for GHG PALs and synthetic minor source permitting authority would have the effect of reducing permitting burden in that the burden associated with obtaining or issuing a PAL permit or synthetic minor permit would be more than offset through avoiding subsequent PSD permitting actions with greater associated burden.

Although Executive Order 13175 does not apply to this proposed rule, the EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because this action would not create any new requirements for sources in the energy supply, distribution or use sectors.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule would not change the existing GHG permitting thresholds, and therefore would not affect the universe of sources subject to permitting.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(J) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(J) specifies that the provisions of section 307(d) apply to ''promulgation or revision of regulations under [part] C of title I (pertaining to prevention of significant deterioration of air quality and protection of visibility).'' This section clearly subjects the portions of this action that pertain to PSD to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.'' Pursuant to this section, the Administrator determines that the portions of this action that pertain to title V are subject to the provisions of section 307(d). This determination allows for uniform treatment for all aspects of this action.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116 and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416 and 7601).

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride.

Dated: February 24, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 52—[AMENDED]

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

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

Subpart A—[Amended]

2. In § 52.21, add paragraph (dd) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(dd) *Synthetic minor permits.* The provisions in paragraphs (dd)(1) through (dd)(7) of this section govern issuance of, and compliance with, synthetic minor permits that the Administrator may issue to owners or operators of GHG-emitting sources.

(1) *Authority to issue GHG synthetic minor permits.* (i) The Administrator may issue a GHG synthetic minor permit, when requested by the owner or operator of a GHG-emitting source that contains one or more emissions limitations that have the effect of reducing the potential to emit GHGs to:

(*a*) Below a level of GHG emissions (expressed as CO_2e and computed in accordance with paragraph (b)(49)(ii) of this section) specified in the ''subject to regulation'' definition contained in paragraph (b)(49)(iv) of this section;

(*b*) Below the major stationary source applicability thresholds contained in paragraph (b)(1) of this section; and/or

(*c*) Below the significant rate contained in paragraph (b)(23)(i) of this section, or when no significant rate for GHG is contained in that paragraph, to a level of no net emissions increase as specified in paragraph (b)(23)(ii) of this section.

(ii) The Administrator may issue a GHG synthetic minor permit for purposes of:

(*a*) Allowing the GHG-emitting source to avoid applicability of paragraphs (j) through (r)(5) of this section, for that source's GHG emissions, or

(*b*) Establishing a creditable GHG emissions reduction on either a tpy mass basis, or on a CO_2e basis (as computed in accordance with paragraph (b)(49)(ii) of this section).

(iii) Such permits shall contain restrictions that are legally enforceable and enforceable as practical matter.

(iv) Nothing in this paragraph relieves an owner or operator of a GHG-emitting source from complying with any federal or state requirements that otherwise apply to the source.

(2) *Definitions.* For purposes of paragraph (dd) of this section, the definitions in paragraphs (dd)(2)(i) through (iv) of this section apply. When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) of this section or in the Act.

(i) *Emissions limitation* means a requirement established by the Administrator which limits the quantity, rate, or concentration of GHG emissions on a continuous basis, including any requirement relating to the operation or maintenance of one or

more emissions units to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique when the Administrator can compute the effect of such requirements on the potential to emit GHGs of the emission unit(s)o and such requirement is legally enforceable and enforceable as a practical matter.

(ii) *GHG-emitting source* means any stationary source that emits or has the potential to emit GHGs in amounts that are at or above the major stationary source thresholds contained in paragraph (b)(1) of this section, and is also:

(*a*) A major stationary source for any other regulated NSR pollutant;

(*b*) A new major stationary that will emit or have the potential to emit 100,000 tpy CO_2e; or

(*c*) A stationary source that emits or has the potential to emit 100,000 tpy CO_2e.

(iii) *GHG synthetic minor permit* means a permit that the Administrator issues to a GHG-emitting source that contains one or more emissions limitations that allows the source to become a GHG synthetic minor source; reduces potential to emit GHGs to a level below the significant rate contained in paragraph (b)(23) of this paragraph; reduces potential to emit GHGs to a level that assures that there is no net emissions increase from the GHG-emitting source, and/or creates a creditable emissions reduction for GHGs under paragraph (b)(3) of this section.

(iv) *GHG synthetic minor source* means a GHG-emitting source that, in absence of the Administrator's issuance of a synthetic minor permit, would have the potential to emit GHGs in amounts that are at or above the subject to regulation thresholds contained in paragraph (b)(49) of this section, and the major stationary source thresholds contained in paragraph (b)(1) of this section, but has obtained a synthetic minor permit to limit the potential to emit GHGs to below either of these amounts.

(3) *Permit application requirements.* As part of a permit application requesting a GHG synthetic minor permit, the owner or operator of a GHG-emitting source shall submit the following information to the Administrator for approval:

(i) Identifying information, including the name and address of the owner or operator (and plant name and address if different), and the name and telephone number of the plant manager/contact.

(ii) A description of any ongoing or future planned construction activity that involves or affects emission units identified in paragraph (dd)(3)(iii) of this section, or involves construction of new emissions unit(s); and the commencement date of construction, the anticipated completion date, and the anticipated date each emissions unit will resume or begin regular operations.

(iii) A list of all emissions units that are located at the GHG-emitting source that emit GHGs; and any new emissions units identified in paragraph (dd)(3)(ii) of this section.

(iv) For each emissions unit identified in paragraph (dd)(3)(iii) of this section, the unit's potential to emit GHGs along with supporting calculations.

(*a*) For purposes of this application, the potential to emit of each emissions unit shall be computed without considering any emissions limitations that might be established through the Administrator's issuance of a GHG synthetic minor permit.

(*b*) Such calculations shall include fugitive emissions, to the extent that they are quantifiable, if the emissions unit or GHG-emitting source belongs to one of the source categories listed in paragraph (b)(1)(iii) of this section.

(v) An identification of each emissions unit for which the permit applicant requests that the Administrator establish an emissions limitation, along with the following information:

(*a*) The proposed emissions limitation for each emissions unit and a description of its effect on the potential to emit of the emissions unit. The proposed emission limitations must be expressed over the shortest practicable time period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance.

(*b*) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed emissions limitation.

(*c*) A description of the production processes.

(*d*) Identification of the emissions units.

(*e*) Type and quantity of fuels and/or raw materials used, if applicable.

(*f*) Description and estimated efficiency of air pollution control equipment under present and anticipated operating conditions.

(*g*) Estimates of the current actual emissions, including all calculations for the estimates.

(*h*) Estimates of the potential to emit that would result from compliance with the proposed emissions limitation, including all calculations for the estimates.

(*i*) An identification of other federal requirements with which the emissions unit must comply.

(vi) Any other information specifically requested by the Administrator.

(4) *Procedures for obtaining a synthetic minor permit.* (i) The owner or operator of the GHG-emitting source must submit a permit application to the Administrator. The application must contain the information specified in paragraph (dd)(3) of this section.

Option 1 for paragraphs (dd)(4)(ii) and (iii):

(ii) Within 60 days after receipt of an application, the Administrator will determine if it contains the information specified in paragraph (dd)(3) of this section.

(iii) If the Administrator determines that the application is not complete, the Administrator will request additional information from the owner or operator as necessary to process the application. If the Administrator determines that the application is complete, the Administrator will notify the owner or operator in writing. The Administrator should postmark the completeness determination or request for additional information within 60 days of receipt of the permit application. The application is deemed complete if the Administrator does not request additional information, or send a notice of complete application postmarked within 60 days of receipt of the permit application.

Option 2 for paragraphs (dd)(4)(ii) and (iii):

(ii) Within 30 days after receipt of an application, the Administrator will determine if it contains the information specified in paragraph (dd)(3) of this section.

(iii) If the Administrator determines that the application is not complete, the Administrator will request additional information from the owner or operator as necessary to process the application. If the Administrator determines that the application is complete, the Administrator will notify owner or operator in writing. The Administrator should postmark the completeness determination or request for additional information within 30 days of receipt of the permit application by the Administrator.

(iv) The Administrator will prepare a draft synthetic minor permit that describes the proposed emissions limitation(s) and the effect of such emissions limitation(s) on the potential emissions from any projects identified in paragraph (dd)(3)(ii) of this section, and the potential to emit GHGs of both

the emissions units identified in paragraph (dd)(3)(iii) of this section and the GHG-emitting source.

(v) The Administrator must provide an opportunity for public comment and public participation on the draft synthetic minor permit as set out in paragraphs (dd)(6) of this section.

(vi) After the close of the public comment period, the Administrator will review all comments received and either prepare a final synthetic minor permit or a written explanation of the reasons for a decision to deny the application for the synthetic minor permit.

(vii) The final synthetic minor permit is subject to administrative and judicial review as set out in paragraph (dd)(7) of this section.

(5) *Permit Content.* The permit must include the requirements in paragraphs (dd)(5)(i) through (vii) of this section.

(i) *General Requirements.* The following elements must be included in the permit:

(*a*) The effective date of the permit, and an effective date for any terms and conditions of the permit, if such date differs from the effective date of the permit; and

(*b*) An identification of the emissions units subject to the permit and each emissions unit's associated emissions limitations.

(ii) *Emissions limitations.* The permit must contain one or more emissions limitations. Each emissions limitation must meet the requirements of paragraphs (dd)(5)(ii)(*a*) through (*d*) of this section.

(*a*) To effectively reduce the potential to emit of one or more emissions units at the GHG-emitting source, the permit must include an emissions limitation that is legally enforceable and enforceable as a practical matter, and is expressed over the shortest practicable time period, generally not to exceed a 12-month rolling total.

(*b*) Such emissions limitation must consist of one or more numerical limitations on the quantity, rate, or concentration of GHG emissions on either a mass or CO_2e basis that is expressed over the shortest practical time period and that is legally enforceable and enforceable as a practical matter. If it is impracticable to impose a numerical limitation, then the Administrator may establish pollution prevention requirements, design standards, equipment standards, work practices, operational standards, or maintenance standards, when the Administrator can compute the effect of such restrictions on the emissions unit's or GHG-emitting source's potential to emit GHG and the requirements are legally enforceable and enforceable as a practical matter. The Administrator may also establish any combination of the above requirements.

(*c*) A statement that the emissions limitation applies at all times including startup, shutdown, and malfunction unless a separate emissions limitation applies to these emissions, and such emissions are expressly excluded from an emissions limitations, or the Administrator directs otherwise in the permit.

(*d*) The calculation procedure the owner or operator will use to convert the monitoring system data to emissions data to demonstrate compliance with the emissions limitation.

(iii) *Monitoring requirements.* The permit must include monitoring requirements sufficient to assure compliance with the emissions limitations. The Administrator must require, as appropriate, any of the requirements in paragraphs (dd)(5)(iii)(*a*) and (*b*) of this section.

(*a*) A requirement to monitor, including analysis procedures, test methods, periodic testing, instrumental monitoring, and non-instrumental monitoring. Such monitoring requirements shall assure use of test methods, units, averaging periods, and other statistical conventions consistent with the required emissions limitations.

(*b*) As necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods.

(iv) *Recordkeeping requirements.* The permit must include recordkeeping requirements sufficient to assure compliance with the emissions limitations and monitoring requirements, and must require the elements in paragraphs (dd)(5)(iv)(*a*) through (*c*) of this section.

(*a*) Records of required monitoring information that include the information in paragraphs (dd)(5)(iv)(*a*)(*1*) through (*6*) of this section, as appropriate.

(*1*) The location, date, and time of sampling or measurements.

(*2*) The date(s) analyses were performed.

(*3*) The company or entity, and the name of the specific individuals that performed the analyses.

(*4*) The analytical techniques or methods used.

(*5*) The results of such analyses.

(*6*) The operating conditions existing at the time of sampling or measurement.

(*b*) Retention for 5 years of records of all required monitoring data and support information for the monitoring sample, measurement, report, or application. Support information may include all calibration and maintenance records, all original strip-chart recordings or digital records for continuous monitoring instrumentation, and copies of all reports required by the permit.

(*c*) A copy of the synthetic minor permit application and any additional information requested by the Administrator to support the application.

(v) *Reporting requirements.* The permit must include the reporting requirements in paragraphs (dd)(5)(v)(*a*) through (*d*) of this section.

(*a*) Annual submittal of total GHG emissions and calculations for each emissions unit subject to an emissions limitation in the synthetic minor permit. Such calculations shall be based on the terms and conditions in the permit that limit GHG emissions. Where necessary for a calculation of annual GHG emissions, the permit must require reporting of actual hours of operation, material used, and other relevant metrics.

(*b*) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Within the permit, the Administrator must define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable emissions limitations.

(*c*) For each requirement in the permit, an annual submission of a compliance certification signed by the owner or operator, attesting to the GHG-emitting source's compliance with such requirement, or a statement that the GHG-emitting source failed to comply with the requirement and an explanation of such non-compliance. For purposes of complying with this reporting requirement, the owner or operator may concurrently attest to all requirements with which it complied, but must address each requirement with which it failed to comply separately.

(*d*) A requirement to notify the Administrator in writing within 30 days from the date the operator begins actual construction, and any construction activity completes, and when regular operations begin, for any project involving or affecting any emissions unit that is subject to a requirement in the synthetic minor permit.

(*e*) A requirement to provide all reports electronically, unless the Administrator has not provided a system for such electronic reporting.

(*1*) For projects involving or affecting multiple emissions units, the notification must be submitted within

30 days from when such activities first occur for any emissions unit.

(*2*) If such activity was not already described in the permit application as required by paragraph (dd)(3) of this section, the notification shall identify the emissions units involved in or affected by the project, and describe the nature of the construction activity and any affect such activity will have on the potential to emit of an emissions unit, or on the GHG-emitting source, otherwise the notification should reference the permit application.

(vi) *Severability clause.* A statement stating that the provisions of this synthetic minor permit are severable, and if any provision of the permit is held invalid, the remainder of the permit shall not be affected.

(vii) *Additional provisions.* The permit must also contain provisions stating the requirements in paragraphs (dd)(5)(vii)(*a*) through (*g*) of this section.

(*a*) You, as the permittee, must comply with all conditions of your permit, including emissions limitations that apply to the emissions units at your source. Noncompliance with any permit term or condition is a violation of the permit and may constitute a violation of the Act and is grounds for enforcement action and for a permit termination or revocation.

(*b*) It is not a defense for you, as the permittee, in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(*c*) The Administrator may reopen, revise, terminate or revoke the permit. The filing of a request by you, as the permittee, for a permit revision, revocation, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(*d*) The permit does not relieve the permittee from complying with any federal or state requirements that otherwise apply to the source.

(*e*) The permit does not convey any property rights of any sort or any exclusive privilege.

(*f*) You, as the permittee, shall furnish to the Administrator, within a reasonable time, any information that the Administrator may request in writing to determine whether cause exists for reopening, revising, revoking, or terminating the permit or to determine compliance with the permit. For any such information claimed to be confidential, you must also submit a claim of confidentiality in accordance with part 2, subpart B of this chapter.

(*g*) You, as the permittee, must allow a representative of the Administrator (who must comply with the safety requirements of the permittee) to:

(*1*) Enter upon your premises where the source is located or emissions-related activity is conducted, or where records are required to be kept under the conditions of the permit;

(*2*) Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;

(*3*) Inspect, during normal business hours or while the source is in operation, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(*4*) Sample or monitor, at reasonable times, substances or parameters for the purpose of determining compliance with the permit or other applicable requirements; and

(*5*) Record any inspection by use of written, electronic, magnetic, and photographic media.

(6) *Public participation requirements.* This paragraph applies to the issuance of synthetic minor permits.

(i) *Public availability of documents.* With the exception of any confidential information as defined in part 2, subpart B of this chapter, the Administrator must make available for public inspection the documents listed in paragraphs (dd)(6)(i)(*a*) through (*d*) of this section. The Administrator must make such information available for public inspection at the appropriate EPA Regional Office.

(*a*) All information submitted as part of an application for a permit.

(*b*) Any additional information requested by the Administrator.

(*c*) The Administrator's analysis of the application and any relevant, additional information submitted by the source.

(*d*) A copy of the draft permit or the decision to deny the permit with the justification for denial.

(ii) *Public notice requirements.* (*a*) Before issuing a synthetic minor permit, the Administrator must prepare a draft permit and must provide adequate public notice to ensure that the area affected has reasonable access to the application and draft permit information, as set out in paragraphs (dd)(6)(ii)(*a*)(*1*) and (*2*) of this section. The public notice must provide an opportunity for public comment, and may provide notice of a public hearing on the draft permit.

(*1*) The Administrator must mail a copy of the notice to the GHG-emitting source, and the state, and local air pollution authorities having jurisdiction in the area in which the GHG-emitting source is located.

(*2*) The Administrator will use appropriate means of notification, depending on such factors as the nature and size of your source, local air quality considerations, and the characteristics of the population in the affected area. Appropriate means include those listed in paragraphs (dd)(6)(ii)(*a*)(*2*)(*i*) through (*v*) of this section.

(*i*) The Administrator may mail or email a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

(*ii*) The Administrator may post the notice on its Web site.

(*iii*) The Administrator may publish the notice in a newspaper of general circulation in the area affected by the source.

(*iv*) The Administrator may provide copies of the notice for posting at one or more locations in the area affected by the source, such as post offices, trading posts, libraries, tribal environmental offices, community centers, or other gathering places in the community.

(*v*) The Administrator may employ other means of notification as appropriate.

(*b*) The notice required pursuant to paragraph (dd)(6)(ii)(*a*) of this section must include the following information at a minimum:

(*1*) Identifying information, including the name and address of the owner and operator of the GHG-emitting source (and plant name and address if different) and the name and telephone number of the plant manager/contact;

(*2*) The name and address of the reviewing authority processing the permit action;

(*3*) An explanation of any emissions changes that will result from the permit action;

(*4*) A description of the proposed emissions limitation(s) and its effect on the potential to emit of a project, one or more emissions units, or the GHG-emitting source;

(*5*) Instructions for requesting a public hearing;

(*6*) The name, address, and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(*7*) Locations and times of availability of the information (listed in paragraph (dd)(6)(i) of this section) for public inspection; and

(*8*) A statement that any person may submit written comments, a written request for a public hearing, or both, on the draft permit action and the time frames by which any person must take such action(s).

(iii) *Public comment.* (*a*) The Administrator must provide at least 30 days from the date of public notice provided under paragraph (dd)(6)(ii) of this section for the public to submit comments on the draft permit. The Administrator may extend this period if he or she determines it is appropriate to do so.

(*b*) Any person may submit written comments on the draft permit during the public comment period. These comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period.

(*c*) The public comment period under paragraph (dd)(6)(iii)(*a*) of this section will not close before the date of any public hearing held in accordance with paragraph (dd)(6)(iv) of this section. The hearing officer may also extend the comment period by so stating at the hearing.

(iv) *Public Hearing.* (*a*) Any person may request a public hearing on a permit, but such request must be submitted to the Administrator, in writing, and must state the nature of the issues proposed to be raised at the hearing, and must be postmarked no later than 15 days after the Administrator provides public notice of the draft permit under paragraph (dd)(6)(ii) of this section.

(*b*) The Administrator must hold a hearing whenever there is, on the basis of requests and the issues raised therein, a significant degree of public interest in a draft permit. The Administrator may also hold a public hearing at the Administrator's discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(*c*) The Administrator must provide notice, consistent with the requirements in paragraph (dd)(6)(ii) of this section, that the Administrator will hold a public hearing. Such notice must be provided at least 15 days before the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit, and the two notices may be combined.

(*d*) The Administrator may set reasonable limits on the time allowed for oral statements at the hearing.

(*e*) The Administrator must make a tape recording or written transcript of any hearing available to the public as part of the final administrative record for the permit under paragraph (dd)(7)(iii) of this section.

(7) *Final permit issuance and administrative and judicial review*—(i) *Notification of the final permit decision.* The Administrator must notify the GHG-emitting source of the final permit decision, in writing, and if the permit is denied, of the reasons for such denial. The Administrator must also provide adequate public notice of the final permit decision, consistent with the provisions in paragraph (dd)(6)(ii) of this section.

(ii) *Effective date of the permit.* A final permit becomes effective 30 days after the Administrator issues the permit, unless:

(*a*) A later effective date is specified in the permit; or

(*b*) Review of the final permit is request under paragraph (dd)(7)(iv), in which case the effective date of the permit is stayed until the Administrator issues a notice of final agency action under paragraph (dd)(7)(iv)(b), unless the Administrator notifies the Environmental Appeals Board, and the applicant, and all of the interested parties, that the permit contains uncontested and severable conditions, in which case, these conditions shall become fully effective enforceable obligations of the permit as specified in paragraph (dd)(7)(ii)(a) of this section, but the remainder of the permit conditions will be stayed as specified in this paragraph; or

(*c*) The Administrator may make the permit effective immediately upon issuance if no comments requested a significant change in the draft permit or provided a technical justification for why the Administrator should deny the permit.

(iii) *Administrative record.* (*a*) The Administrator must base final permit decisions on an administrative record consisting of:

(*1*) The application and any supporting data furnished by the applicant;

(*2*) The draft permit or notice of intent to deny the application;

(*3*) Other documents in the supporting files for the draft permit that the Administrator considered in the decisionmaking;

(*4*) All significant comments received during the public comment period;

(*5*) The tape or transcript or other electronic record of any hearing(s) held;

(*6*) Any written material submitted at such hearing(s);

(*7*) Any new materials placed in the record as a result of the Administrator's evaluation of public comments;

(*8*) The final permit; and

(*9*) Other documents in the supporting files for the final permit that the Administrator considered in the final decisionmaking.

(*b*) The Administrator must add the additional documents required under paragraph (dd)(7)(iii)(*a*) of this paragraph to the record as soon as possible after their receipt or preparation by the Administrator. The record is complete on the date the Administrator issues the final permit.

(*c*) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (dd)(7)(iii)(*a*) of this paragraph need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the that file.

(iv) *Appealing a permit decision.* Permit decisions may be appealed according to the following provisions:

(*a*) The Administrator delegates authority to the Environmental Appeals Board (the Board) to issue final decisions in permit appeals filed under this program. An appeal directed to the Administrator, rather than to the Board, will be forwarded to the Board for consideration. This delegation does not preclude the Board from referring an appeal or a motion under this program to the Administrator when the Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Board, all parties shall be so notified and the provisions of this program referring to the Board shall be interpreted as referring to the Administrator.

(*b*) Any person seeking to appeal a permit decision must follow the provisions for PSD permits in § 124.19 of this chapter.

(*c*) The final synthetic minor permit is subject to administrative and judicial review as set out in § 124.19 of this chapter.

(v) *Permit Revisions.* (*a*) The Administrator may reopen, revise, terminate, or revoke requirements within the synthetic minor permit, or may take such action on the entirety of the synthetic minor permit. Such actions may be taken by the Administrator for cause on its own initiative, or at the request of the permittee.

(*b*) Except for administrative permit revisions identified in paragraph (dd)(7)(vi) of this section, the Administrator shall follow all of the public participation requirements in paragraphs (dd)(6) of this section before revising, revoking, or terminating requirements in the synthetic minor permit.

(*c*) All changes to a permit are subject to the effective date, and administrative review requirements contained in paragraph (dd)(7)(i) through (iv) of this section.

(vi) *Administrative permit revision.* The following provisions govern administrative permit revisions.

(*a*) An administrative permit revision is a permit revision that makes any of the following changes:

(*1*) Corrects typographical, calculation or other errors.

(*2*) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source.

(*3*) Requires more frequent monitoring or reporting by the permittee.

(*4*) Allows for a change in ownership or operational control of a GHG-emitting source when the Administrator determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Administrator.

(*5*) Incorporates any other type of change that the Administrator determines is similar to those in paragraphs (dd)(*7*)(vi)(*a*)(*1*) through (*5*) of this section.

(*b*) An administrative permit revision is not subject to the permit application, issuance, public participation or administrative requirements of this program.

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H.R. 3630/P.L. 112–96
Middle Class Tax Relief and Job Creation Act of 2012 (Feb. 22, 2012; 126 Stat. 156)

H.R. 1162/P.L. 112–97
To provide the Quileute Indian Tribe Tsunami and Flood Protection, and for other purposes. (Feb. 27, 2012; 126 Stat. 257)

Last List February 17, 2012

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