FEDERAL REGISTER

Vol. 78 Thursday
No. 80 April 25, 2013

OFFICE OF THE FEDERAL REGISTER

UNITED STATES GOVERNMENT PRINTING OFFICE

FEDERAL REGISTER

Vol. 78 Thursday,
No. 80 April 25, 2013

Pages 24327–24664

OFFICE OF THE FEDERAL REGISTER

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WHEN: Tuesday, May 14, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–FV–12–0045; FV12–905–1 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Citrus Administrative Committee (Committee) for the 2012–13 and subsequent fiscal periods from $0.0072 to $0.008 per 4/5 bushel carton of citrus handled. The Committee locally administers the marketing order that regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Assessments upon citrus handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* April 26, 2013.

FOR FURTHER INFORMATION CONTACT: Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Corey.Elliott@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus beginning on August 1, 2012, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2012–13 and subsequent fiscal periods from $0.0072 to $0.008 per 4/5 bushel carton of citrus.

The Florida citrus marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods and services in their local area. Thus, they are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 17, 2012, and unanimously recommended 2012–13 expenditures of $223,500 and an assessment rate of $0.008 per 4/5 bushel carton of citrus. In comparison, last year's budgeted expenditures were also $223,500. The assessment rate of $0.008 is $0.0008 higher than the rate currently in effect.

The Committee estimates 2012–2013 production to be approximately 27.3 million 4/5 bushel cartons, down from the 29.5 million 4/5 bushel cartons estimated for last year. At the current assessment rate, assessment income would equal only $196,560, an amount insufficient to cover the Committee's anticipated expenditures. The assessment rate increase will generate additional revenue and will help offset the amount of reserves needed to fund the budget. Therefore, the Committee recommended increasing the assessment rate.

The major expenditures recommended by the Committee for the 2012–13 year include $116,200 for salaries, $25,000 for Florida Department of Agriculture and Consumer Services (FDACS) manifesting, and $18,250 for a retirement plan. Budgeted expenses for these items in 2011–12 were the same as recommended for 2012–13 budgeted expenditures, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses,

expected shipments of Florida citrus, interest income, and available reserves. Citrus shipments for the year are estimated at 27.3 million 4/5 bushel cartons which should provide $218,400 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve should be adequate to cover budgeted expenses. Funds in the reserve (approximately $34,000) will be kept within the maximum permitted by the order, not to exceed one half of one fiscal period's expenses as stated in § 905.42.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012–13 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 45 handlers subject to regulation under the marketing order and approximately 8,000 producers of citrus in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2010–11 season was approximately $12.16 per 4/5 bushel carton, and total fresh shipments were approximately 30.4 million cartons. Using the average f.o.b. price and shipment data, about 55 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida citrus growers, the average annual grower revenue is below $750,000. Thus, assuming a normal distribution, the majority of handlers and producers of Florida citrus may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent fiscal periods from $0.0072 to $0.008 per 4/5 bushel carton of citrus. The Committee unanimously recommended 2012–13 expenditures of $223,500 and an assessment rate of $0.008 per 4/5 bushel carton of citrus. The assessment rate of $0.008 is $0.0008 higher than the 2011–12 rate. The quantity of assessable citrus for the 2012–13 season is estimated at 27.3 million cartons. Thus, the $0.008 rate should provide $218,400 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve fund should be adequate to meet this year's anticipated expenses.

The major expenditures recommended by the Committee for the 2012–13 year include $116,200 for salaries, $25,000 for Florida Department of Agriculture and Consumer Services (FDACS) manifesting, and $18,250 for a retirement plan. Budgeted expenses for these items in 2011–12 were the same as recommended for 2012–13 budgeted expenditures, respectively.

As previously stated, the Committee estimates the 2012–2013 production to be approximately 27.3 million 4/5 bushel cartons, down from the 29.5 million 4/5 bushel cartons estimated for last year. At the current assessment rate, assessment income would equal only $196,560, an amount insufficient to cover the Committee's anticipated expenditures. The assessment rate increase will generate additional revenue and will help offset the amount of reserves needed to fund the budget. Therefore, the Committee recommended increasing the assessment rate.

The Committee reviewed and unanimously recommended 2012–13 expenditures of $223,500. Prior to arriving at this budget, the Committee considered information from the Committee's Executive Subcommittee. Alternative expenditure levels were discussed by this group. The assessment rate of $0.008 per 4/5 bushel carton of citrus was then determined by reviewing anticipated expenses, total expected shipments of citrus, interest income, and the available reserves. Based on estimated shipments of 27.3 million cartons, the increased assessment rate should provide $218,400 in assessment income. This is approximately $5,100 less than anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2012–13 season could range between $3.83 and $10.13 per 4/5 bushel carton of citrus. Therefore, the estimated assessment revenue for the 2012–13 crop year as a percentage of total grower revenue could range between .08 and .2 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 17, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

This rule imposes no additional reporting or recordkeeping requirements

on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on January 15, 2013 (78 FR 2908). Copies of the proposed rule were also mailed or sent via facsimile to all Florida citrus handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending January 25, 2013, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the crop year began August 1, handlers are already receiving 2012–13 citrus from growers, and the order requires that the rate of assessment apply to all assessable citrus handled during such period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2012, an assessment rate of $0.008 per 4/5 bushel carton or equivalent is established for Florida citrus covered under the order.

Dated: April 22, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09814 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Doc. No. AMS–FV–12–0038; FV12–906–1 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2012–13 and subsequent fiscal periods from $0.14 to $0.16 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order that regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas (order). Assessments upon orange and grapefruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective April 26, 2013.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

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

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 2012, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than

20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2012–13 and subsequent fiscal periods from $0.14 to $0.16 per 7/10-bushel carton or equivalent of oranges and grapefruit handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011–12 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 5, 2012, and unanimously recommended 2012–13 expenditures of $1,340,800 and an assessment rate of $0.16 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,273,537. The assessment rate of $0.16 is $0.02 higher than the rate currently in effect. The increased assessment rate should generate sufficient income to cover anticipated expenses, including an increase in advertising and promotion, as well as allow the Committee to replenish funds in its reserves.

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $575,000 for promotion; $489,500 for the Mexican fruit fly control program; and $243,000 for management, administration, and compliance. Budgeted expenses for these items in 2011–12 were $425,000, $564,500, and $250,737, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Orange and grapefruit shipments for the 2012–13 fiscal period are estimated at 8.5 million 7/10-bushel cartons or equivalent, which should provide $1,360,000 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (currently $78,090) will be kept within the maximum permitted by the order (approximately one fiscal period's expenses as stated in § 906.35).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2012–13 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 170 producers of oranges and grapefruit in the production area and 15 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistics Service, the weighted average grower price for Texas citrus during the 2010–11 season was around $11.30 per box and total shipments were near 7.3 million boxes. Using the weighted average price and shipment information, and assuming a normal distribution, the majority of growers would have annual receipts of less than $750,000. In addition, based on available information, approximately 60 percent of Texas citrus handlers could be considered small businesses under SBA's definition. Thus, the majority of producers and handlers of Texas citrus may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent fiscal periods from $0.14 to $0.16 per 7/10-bushel carton or equivalent of Texas oranges and grapefruit. The Committee unanimously recommended 2012–13 expenditures of $1,340,800 and an assessment rate of $0.16 per 7/10-bushel carton or equivalent handled. The assessment rate of $0.16 is $0.02 higher than the 2011–12 rate. The quantity of assessable oranges and grapefruit for the 2012–13 fiscal period is estimated at 8.5 million 7/10-bushel cartons or equivalent. Thus, the $0.16 rate should provide $1,360,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $575,000 for promotion; $489,500 for the Mexican fruit fly control program; and $243,000 for management, administration and compliance. Budgeted expenses for these items in 2011–12 were $425,000, $564,500, and $250,737, respectively.

The Committee reviewed and unanimously recommended 2012–13 expenditures of $1,340,800, which included increases in promotional activities. The Committee considered proposed expenses and recommended increasing the assessment rate to cover the increase in the advertising and promotion program, as well as to allow the Committee to replenish funds in its reserve.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various

research and promotion projects to the Texas citrus industry. The assessment rate of $0.16 per 7/10-bushel carton or equivalent of assessable oranges and grapefruit was then determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit, estimated at 8.5 million 7/10-bushel cartons or equivalent for the 2012–13 fiscal period. Based on estimated shipments, the recommended assessment rate of $0.16 should provide $1,360,000 in assessment income. This is approximately $19,200 above the anticipated expenses of $1,340,800, which the Committee determined to be acceptable as any assessments collected above expenditures are to be added to reserves.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2012–13 season could range between $8.98 and $16.35 per 7/10-bushel carton or equivalent of oranges and grapefruit. Therefore, the estimated assessment revenue for the 2012–13 fiscal period, as a percentage of total grower revenue, could range between 1 and 2 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Texas citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 5, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

This rule imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on January 9, 2013 (78 FR 1763). Copies of the proposed rule were also mailed or sent via facsimile to all orange and grapefruit handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending January 22, 2013, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2012–13 oranges and grapefruit from growers, and the crop year began on August 1 and the assessment rate applies to all oranges and grapefruit received during the 2012–13 and subsequent fiscal periods. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 906

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

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

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

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2012, an assessment rate of $0.16 per 7/10-bushel carton or equivalent is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: April 19, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09734 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. AMS–FV–12–0028; FV12–922–2 FIR]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that temporarily suspended the handling regulations and inspection requirements prescribed under the marketing order for apricots grown in designated Counties in Washington. The interim rule suspended the minimum grade, size, quality, maturity, and inspection requirements for the 2012–2013 fiscal period. This change is expected to reduce overall industry expenses and increase net returns to producers and handlers.

DATES: Effective April 26, 2013.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–

2724; Fax: (503) 326–7440; or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922, as amended (7 CFR 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

The handling of apricots grown in designated Counties in Washington is regulated by 7 CFR part 922. Section 922.321, with exemptions for certain varieties and types of shipments, provides that all apricots shall grade not less than Washington No. 1, and are at least reasonably uniform in color; provided, that such apricots of the Moorpark variety in open containers shall be generally well matured. The regulation also includes a minimum quantity exemption, as well as specific tolerances for apricots that fail to meet color, minimum diameter, and quality requirements. The objective of the handling regulation has been to ensure that only acceptable quality apricots enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. However, due to the evolving nature of fresh fruit marketing, many wholesale and retail apricot buyers now require their own specific criteria for product quality from all handlers. Therefore, this rule continues in effect the interim rule that suspended the handling regulations prescribed in § 922.321 for the 2012–2013 fiscal period.

Section 922.111 contains provisions for handlers to apply for waivers from mandatory inspection when such inspection is not readily available from the Inspection Service. With the suspension of the regulation, such waivers are no longer necessary. Therefore, consistent with the suspension of § 922.321, this rule also continues in effect the interim rule that suspended § 922.111 for the 2012–2013 fiscal period.

In an interim rule published in the **Federal Register** on January 8, 2013, and effective on January 9, 2013, (78 FR 1127, Doc. No. AMS–FV–12–0028, FV12–922–2 IR), §§ 922.321 and 922.111 were suspended for the 2012–13 fiscal period, ending March 31, 2013.

Final Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of Washington apricots who are subject to regulation under the marketing order and approximately 94 apricot producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reports that the total annual production of Washington apricots has fluctuated from approximately 4,200 to 8,900 tons per year for the past several years. NASS also reports that the 2011 value of utilized production for Washington apricots was $7,132,000. Therefore, based on the 2011 value of Washington apricots and the approximate number of apricot producers in the production area, the 2011 average producer receipts were approximately $76,000; which is considerably less than the $750,000 threshold. In view of the foregoing, it can be concluded that a majority of the handlers and producers of Washington apricots may be classified as small entities.

This rule continues in effect the interim rule that suspended the handling regulations specified in §§ 922.111 and 922.321 for the 2012–2013 fiscal period. The suspension of these handling regulations allows the Washington apricot industry to market apricots without regard to the minimum grade, size, quality, maturity, and inspection requirements prescribed under the federal marketing order. Authority for this action is provided in § 922.53.

This action is not expected to increase the costs associated with the order requirements. Rather, this action allows handlers to decrease their costs during the 2012–2013 fiscal period by eliminating the expense associated with mandatory inspection. However, this rule does not impede handlers from seeking inspection on a voluntary basis if they find inspection desirable. The opportunities and benefits of this rule are equally available to all Washington apricot handlers and producers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 24, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before March 11, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/*

#!documentDetail;D=AMS-FV-12-0028-0001.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. 3501–3520), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 1127, January 8, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR part 922 and was published at 78 FR 1127 on January 8, 2013, is adopted as a final rule, without change.

Dated: April 19, 2013.

Rex A. Barnes,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09738 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–FV–12–0002; FV12–929–1 FIR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changing Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that revised the reporting requirements prescribed under the marketing order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York (order). The interim rule changed the dates covered by the third reporting period and the date by which the Handler Inventory Report (Form HIR) is due to the Committee. These changes help ensure the Committee has current and complete information available for its discussions during its annual August meeting, while providing handlers sufficient time to submit their reports.

DATES: Effective April 26, 2013.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929, both as amended (7 CFR part 929), regulating the handling of cranberries produced in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

The handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York is regulated by 7 CFR part 929. Prior to this change, reports were to be filed with the Committee by each handler not later than January 20, May 20, and August 20 of each fiscal period and by September 20 of the succeeding fiscal period. The Handler Inventory Report (Form HIR) previously showed the total quantity of cranberries acquired and the total quantity of cranberries and *Vaccinium oxycoccus* cranberries handled from the beginning of the reporting period indicated through December 31, April 30, July 31, and August 31, respectively. The reports also previously showed the total quantity of cranberries and *Vaccinium oxycoccus* cranberries as well as cranberry products and *Vaccinium oxycoccus* cranberry products held by the handler on January 1, May 1, August 1, and August 31 of each fiscal period. However, having the report due by August 20 meant that this information, which is important for Committee discussions, may not be received prior to the Committee's annual August meeting. Therefore, this rule continues in effect the rule that changed the timeframes for the third reporting period by adjusting the due date from August 20 to July 20, the end date from July 31 to June 30 for cranberries acquired and handled, and the date for reporting inventory held from August 1 to June 30.

In an interim rule published in the **Federal Register** on August 30, 2012, and effective on August 31, 2012, (77 FR 52595, Doc. No. AMS–FV–12–0002, FV12–929–1 IR), § 929.105 was amended by changing the due date for the third reporting period from August 20 to July 20, adjusting the end date from July 31 to June 30 for cranberries acquired and handled, and changing the date for reporting inventory held from August 1 to June 30.

Final Regulatory Flexibility Analysis

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

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

There are approximately 55 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,200 cranberry producers in the regulated area. Small agricultural service firms are defined by

the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000 (13 CFR 121.201).

Based on Committee data and information from the National Agricultural Statistics Service, the average annual f.o.b. price of cranberries during the 2010 season was approximately $46.50 per barrel and total shipments were approximately 6.8 million barrels. As a percentage, about 18 percent of the handlers shipped approximately 6.5 million barrels of cranberries. Using the average f.o.b. price and shipment data, about 82 percent of cranberry handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices and the total number of cranberry growers, the average grower revenue is less than $750,000. Therefore, the majority of growers and handlers of cranberries may be considered small entities.

This rule continues in effect the action that revised the reporting requirements prescribed under the cranberry marketing order. This rule revises § 929.105 by changing the due date for the third reporting period from August 20 to July 20. To accommodate the new due date, this rule also adjusts the end date for the timeframe covered under the third period reporting from July 31 to June 30 for cranberries acquired and handled, and from August 1 to June 30 for reporting inventory held. These changes will help ensure the Committee has current and complete information available for discussion during its annual August meeting, while providing handlers sufficient time to submit their Handler Inventory Report (Form HIR). The authority for these actions is provided in § 929.62. These changes were unanimously recommended by the Committee at a meeting on August 31, 2011.

It is not anticipated that this action will impose any additional costs on the industry nor will it change the reporting and recordkeeping burden on handlers. Having current and complete information available during the Committee's August meeting will assist the Committee when making decisions regarding the administration of the order. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or growers than for large entities.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, Generic Fruit Crops. Because this revision changes neither the content of the Handler Inventory Report (Form HIR) nor its calculated burden, no changes in OMB requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 31, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before October 29, 2012. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0002-0001.*

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

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (77 FR 52595, August 30, 2012) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ Accordingly, the interim rule that amended 7 CFR part 929 and that was published at 77 FR 52595 on August 30, 2012, is adopted as a final rule, without change.

Dated: April 22, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09817 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Doc. no. AMS–DA–07–0026; AO–14–A77, et al.; DA–07–02]

Milk in the Northeast and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule permanently adopts changes to the manufacturing cost allowances and the butterfat yield factor used in Class III and Class IV product-price formulas applicable to all Federal milk marketing orders. These amendments were adopted by an interim final rule issued on July 25, 2008, that became effective on October 1, 2008. More than the required number of producers approved the issuance of the orders as amended.

DATES: *Effective Date:* July 1, 2013.

FOR FURTHER INFORMATION CONTACT: William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, Stop 0231-Room 2971–S 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 720–7183, email address: *william.francis@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule finalizes manufacturing (make) allowances for cheese, butter, nonfat dry milk (NFDM) and dry whey contained in the Class III and Class IV product price formulas that were implemented October 1, 2008, on an interim basis. Specifically, this decision finalizes the following make allowances: cheese

($0.2003 per pound); butter ($0.1715 per pound); NFDM ($0.1678 per pound); and dry whey ($0.1991 per pound). In addition, the butterfat yield factor in the butterfat price formula continues to be 1.211.

Accordingly, this final rule adopts proposed amendments detailed in the final decision (78 FR 9248).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule would not have a significant economic impact on a substantial number of small entities. For the purposes of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farms. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of February 2007, the month the initial public hearing was held, the milk of 49,712 dairy farms were pooled on the Federal order system. Of the total, 46,729 dairy farms, or 94 percent, were considered small businesses. During the same month, 352 plants were regulated by or reported their milk receipts to be pooled and priced on a Federal order. Of the total, 186 plants, or 53 percent, were considered small businesses.

This decision finalizes the make allowances contained in the formulas used to compute component prices and the minimum class prices in all Federal milk orders. Specifically, the make allowance for butter continues to be $0.1715 per pound (initially increased from $0.1202 per pound), the make allowance for cheese continues to be $0.2003 per pound (initially increased from $0.1682 per pound), the make allowance for NFDM continues to be $0.1678 per pound (initially increased from $0.1570 per pound), and the make allowance for dry whey continues to be $0.1991 per pound (initially increased from $0.1956 per pound). Finally, the butterfat yield factor in the butterfat price formulas continues to be 1.211 (initially increased from 1.20).

These make allowances serve to approximate the average cost of producing cheese, butter, NFDM and dry whey for manufacturing plants located in Federal milk marketing areas. The established criteria for the make allowance changes are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products.

An economic analysis has been performed that discusses impacts of the proposed amendments on industry participants including producers and manufacturers. It can be found on the AMS Web site at *www.ams.usda.gov/dairy*. Based on that economic analysis we have concluded that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

This final rule does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued February 5, 2007; published February 9, 2007 (72 FR 6179).

Supplemental Notice of Hearing: Issued February 14, 2007; published February 20, 2007 (72 FR 7753).

Notice to Reconvene Hearing: Issued March 15, 2007; published March 21, 2007 (72 FR 13219).

Notice to Reconvene Hearing: Issued May 2, 2007; published May 8, 2007 (72 FR 25986).

Tentative Partial Final Decision: Issued June 16, 2008; published June 20, 2008 (73 FR 35306).

Interim Final Rule: Issued July 25, 2008; published July 31, 2008 (73 FR 44617).

Delay of Effective Date: Issued August 28, 2008; published September 3, 2008 (73 FR 51352).

Final Decision: Issued February 1, 2013; published February 7, 2013 (78 FR 9248)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Northeast and other marketing orders:

(a) *Findings upon the basis of the hearing record.*

A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held

pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of this order amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the order amending the orders contained in the interim amendments of the orders issued by the Administrator, Agricultural Marketing Service, on July 25, 2008, and published in the **Federal Register** on July 31, 2008, (73 FR 44617), are adopted and shall be the terms and provisions of these orders.

Dated: April 22, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09819 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AC87

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (Reform Act), and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (Inflation Adjustment Act), requires all Federal agencies with the authority to impose CMPs to evaluate those CMPs periodically to ensure that they continue to maintain their deterrent value and promote compliance with the law.

DATES: This regulation is effective on July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056, or Nancy Tunis, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4061, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objectives of this regulation are to:

- Adjust for inflation the maximum amount of CMPs that the FCA has jurisdiction to administer pursuant to the Farm Credit Act in accordance with the requirements of the Inflation Adjustment Act,[1] and
- Implement the provisions for the maximum amount of CMPs provided by the Biggert-Waters Act.[2]

II. Background

A. Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

The Inflation Adjustment Act requires every Federal agency with authority to issue CMPs[3] to enact regulations that adjust its CMPs pursuant to the inflation adjustment formula in section 5(b) of the Inflation Adjustment Act. Each Federal agency was required to issue these regulations by October 23, 1996, and, thereafter, to evaluate and adjust the CMPs when necessary, but at least once every 4 years. Section 6 of the amended Inflation Adjustment Act specifies that inflation-adjusted CMPs will apply only to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI).[4] Specifically, section 5(b) of the Inflation Adjustment Act defines the term "cost-of-living adjustment" as "the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law." Furthermore, the increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the Inflation Adjustment Act. FCA made its last adjustments to CMPs in January 2009.

B. CMPs Issued Under the Farm Credit Act

The adjustment requirement affects two provisions of section 5.32(a) of the

[1] 28 U.S.C. 2461 note.

[2] Public Law 112–141, 126 Stat. 405 (July 6, 2012).

[3] *See* 28 U.S.C. 2461 note. Section 3(2) of the amended Inflation Adjustment Act defines a CMP as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; and (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

[4] The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its Web site: *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

Farm Credit Act. First, it provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of a final order issued under section 5.25 or 5.26 of the Farm Credit Act must pay up to $1,000[5] per day for each day during which such violation continues. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or 4.14A(i) of the Farm Credit Act "shall be treated" as a final order issued under section 5.25 for purposes of assessing a CMP. Second, section 5.32(a) also states that "[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more that $500[6] per day for each day during which such violation continues." The maximum amounts of the CMPs, as adjusted pursuant to the Inflation Adjustment Act, are set forth in existing § 622.61 of FCA regulations.

1. Mathematical Calculation

In general, the adjustment calculation required by the Inflation Adjustment Act is based on the percentage by which the CPI for June 2012 exceeds the CPI for June of the calendar year the maximum amount of the CMPs was last adjusted.[7] The maximum CMPs for violation of the terms of a final order issued under section 5.25 or 5.26 of the Farm Credit Act was last adjusted in 1996.[8] The maximum CMPs for a violation of the Farm Credit Act, or a regulation issued under the Farm Credit Act, was last adjusted in 2009. According to the Bureau of Labor Statistics, the CPI for June 1996 and June 2009 was 156.7 and 215.693, respectively. The CPI for June 2012 was 229.478, resulting in a percentage change of 46.44 percent from June 1996 and 6.39 percent from June 2009.

2. New Penalty Amount in § 622.61(a)(1)

The existing maximum CMPs in § 622.61(a) for a violation of a final order issued under section 5.25 or 5.26 of the Farm Credit Act is $1,100. Multiplying $1,100 by the 46.44[9] percent change in CPI from June 1996 to June 2012 yields an increase of $510.84. When that number is rounded as required by section 5(a) of the Inflation Adjustment Act,[10] the inflation-adjusted maximum increases to $2,100.

3. Penalty Amount Remains the Same in § 622.61(a)(2)

The existing maximum CMPs in § 622.61(a)(2) is $750 for a violation of the Farm Credit Act or regulations issued under the Farm Credit Act that occurs on or after January 16, 2009. Multiplying the existing CMP amount by the 6.39 percent change in CPI from June 2009 to June 2012 yields an increase of $47.93. This increase is rounded down to $0.00 as required by section 5(a) of the Inflation Adjustment Act[11] and, therefore, the inflation-adjusted maximum remains at $750.

C. CMPs Issued Under the Reform Act

The Flood Disaster Protection Act of 1973,[12] as amended by the National Flood Insurance Reform Act of 1994,[13] requires that FCA assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. Pursuant to section 100208 of the Biggert Waters Act, which further amends the Flood Disaster Protection Act of 1973, FCA is amending the maximum CMPs prescribed in 42 U.S.C. 4012a(f)(5).[14] In that statute, Congress increased the maximum CMPs per violation of the National Flood Insurance Program from $385 to $2,000 and eliminated the cap on the total amount of penalties assessed against a single regulated lender in any calendar year.

1. Mathematical Calculation

As a result of the provisions of the Biggert-Waters Act, the CMPs for violating the National Flood Insurance Program are not subject to an inflation adjustment at this time.

2. New Penalty Amounts in § 622.61(b)

As required by the Biggert-Waters Act, the maximum assessment of the CMP for violating 42 U.S.C. 4012a(f)(5) is $2,000 per violation, and the cap on penalties is eliminated.

III. Notice and Comment Not Required by Administrative Procedure Act

The Inflation Adjustment Act gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. In addition, the Biggert-Waters Act gives Federal agencies no discretion in the amount of CMPs for violations of the National Flood Insurance Program. Further, these revisions are ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in final form.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244,

[5] The current inflation-adjusted CMP for a violation of a final order is $1,100 per day, as set forth in § 622.61(a)(1) of FCA regulations.

[6] The current inflation-adjusted CMP for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is $750 per day, as set forth in § 622.61(a)(2) of FCA regulations.

[7] Public Law 101–410, Section 5(b).

[8] The CMP inflation adjustment analysis was conducted in subsequent intervals following 1996; however, the penalty amount did not change in those calculations. The last year the amount was actually amended was 1996, as such, that is the year for which we refer to the consumer price index.

[9] As a result of the mathematical calculation for the year 2009 and the required rounding application, the penalty amount remained the same and did not reset. Therefore, in accordance with the Inflation Adjustment Act, the calculation for the 2012 adjustment is determined by using the June 1996 CPI of 156.7 and the June 2012 CPI of 229.48, resulting in a percentage change of 46.44 percent.

[10] Per section 5(a)(3) of the Inflation Adjustment Act, any increase determined under the subsection shall be rounded to the nearest multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000.

[11] Per section 5(a)(2), any increase determined under this subsection shall be rounded to the nearest multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000.

[12] 42 U.S.C. 4012a.

[13] Public Law 103–325, title V, 108 Stat. 2160, 2255–87 (September 23, 1994).

[14] Section 100208 Enforcement: Section 102(f)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(5) is amended: (1) In the first sentence, by striking "$350" and inserting $2,000; and (2) by striking the second sentence.

2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

■ 2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is $1,100 for violations occurring before July 1, 2013, and $2,100 for violations that occur on or after July 1, 2013.

(2) Amount of civil money penalty for violation of the Act or regulations: the maximum daily amount is $650 for each violation that occurs on or after March 16, 2005, but before January 16, 2009, and $750 for each violation that occurs on or after January 16, 2009.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is: $385 for each violation that occurs on or after March 16, 2005, but before January 16, 2009, with total penalties under such statute not to exceed $110,000 for any single institution during any calendar year; $385 for each violation that occurs on or after January 16, 2009, but before July 1, 2013, with total penalties under such statute not to exceed $120,000 for any single institution during any calendar year; and $2,000 for each violation that occurs on or after July 1, 2013, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Dated: April 19, 2013.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–09807 Filed 4–24–13; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0935; Directorate Identifier 2011–NM–256–AD; Amendment 39–17428; AD 2013–08–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–900 and –900ER series airplanes. This AD was prompted by reports of early fatigue cracks at chem-mill areas on the crown skin panels. This AD requires repetitive inspections for cracking of the fuselage skin along chem-mill steps at certain crown skin and shear wrinkle areas, and repair if necessary. We are issuing this AD to detect and correct fatigue cracking of the skin panel at the specified chem-mill step locations, which could result in rapid decompression of the airplane.

DATES: This AD is effective May 30, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 30, 2013.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *Wayne.Lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on September 18, 2012 (77 FR 57539). That NPRM proposed to require repetitive inspections for cracking of the fuselage skin along chem-mill steps at certain crown skin and shear wrinkle areas, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 57539, September 18, 2012) and the FAA's response to each comment.

Request to Revise Federal Aviation Regulations Citations

Boeing stated that references to section 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 129.109(c)(2)) are incorrect, since that paragraph does not exist in the current revision of the Federal Aviation Regulations and that the correct paragraph reference is section 129.109(b)(2). Boeing noted that this error occurred in the second paragraph of the "Differences Between the Proposed AD and the Service Information" section, and in Note 1 to paragraph (l) of the proposed AD (77 FR 57539, September 18, 2012).

We agree that the specified references are incorrect. We agree that the citation in the proposed AD (77 FR 57539, September 18, 2012) is inaccurate, but since that section of the preamble does not reappear in this AD, no corresponding change to this AD is necessary. We have corrected the citation in Note 1 to paragraph (l) of this AD.

Winglet Supplemental Type Certificate (STC) Comment

Aviation Partners Boeing stated that the installation of winglets per STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/*

rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se) does not affect the actions specified in the NPRM (77 FR 57539, September 18, 2012).

We concur. We have added paragraph (c)(2) to this AD to state that installation of STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 57539, September 18, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 57539, September 18, 2012).

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

Costs of Compliance

We estimate that this AD affects 58 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of chem-mill step locations.	31 work-hours × $85 per hour = $2,635, per inspection cycle.	None	$2,635, per inspection cycle	$152,830, per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–11 The Boeing Company: Amendment 39–17428; Docket No. FAA–2012–0935; Directorate Identifier 2011–NM–256–AD.

(a) Effective Date

This AD is effective May 30, 2013.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–900 and –900ER series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of early fatigue cracks at chem-mill areas on the crown skin panels. We are issuing this AD to detect and correct fatigue cracking of the skin panel at the specified chem-mill step locations, which could result in rapid decompression of the airplane.

(f) Compliance

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

(g) Inspections of Crown Skin Areas

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53–1312, dated October

21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012, except as required by paragraph (k) of this AD: Do an external detailed inspection and an external nondestructive inspection (a medium frequency eddy current (MFEC), magneto optic imager (MOI), C-scan, or ultrasonic phased array (UTPA) inspection) for cracking in the fuselage skin along the chem-mill steps at certain locations specified in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012.

(h) Inspections of Shear Wrinkle Areas

For Group 1 airplanes as identified in Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012: At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012, except as required by paragraph (k) of this AD, do an external detailed inspection and an external nondestructive inspection (MFEC, MOI, C-scan, or UTPA) for cracking in the fuselage skin along the chem-mill steps at certain shear wrinkle locations specified in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012.

(i) Repair

If any cracking is found during any inspection required by either paragraph (g) or (h) of this AD, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (m) of this AD. Accomplishing the repair approved in accordance with the procedures specified in paragraph (m) of this AD terminates the repetitive inspection requirement for that area under the repair only.

(j) Optional Terminating Modification

Modification of an inspection area specified in paragraph (g) of this AD, including doing an external detailed inspection and an external nondestructive inspection (MFEC, MOI, C-scan, or UTPA) for cracking of the area to be modified, and a high frequency eddy current inspection of all existing holes for cracking as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012, terminates the repetitive inspections required by paragraph (g) of this AD for that modified area only. If any cracking is found during any inspection described by this paragraph, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(k) Service Bulletin Exception

Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012, specifies compliance times "after the original issue date of this service bulletin." However, this AD requires compliance within the specified compliance times "after the effective date of this AD."

(l) Post-Modification Inspections

The post-modification inspections specified in Tables 3 and 4 of paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012, are not required by this AD.

Note 1 to paragraph (l) of this AD: The damage tolerance inspections specified in Tables 3 and 4 of paragraph 1.E., "Compliance," of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The actions specified in Part 5 of the Accomplishment Instructions and corresponding figures of Boeing Service Bulletin 737–53–1312, dated October 21, 2011, as revised by Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012, are not required by this AD.

(m) Alternative Methods of Compliance (AMOCs)

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

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

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

(n) Related Information

For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *Wayne.Lockett@faa.gov.*

(o) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 737–53–1312, dated October 21, 2011.

(ii) Boeing Service Bulletin 737–53–1312, Revision 1, dated March 14, 2012.

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

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

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

Issued in Renton, Washington, on April 4, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08996 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0330; Directorate Identifier 2013–NM–051–AD; Amendment 39–17427; AD 2013–08–10]

RIN 2120–AA64

Airworthiness Directives; Kelowna Flightcraft R & D Ltd. Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Tracor (Convair) Model 340 and 440 airplanes and certain Military Model C–131B, C–131D, C–131E, and C131F/R4Y–1 airplanes. This AD requires repetitive inspections of the lower skin of the wings for cracking around the inboard side of the wing station (WS) 6 and 7 access panel doubler fingers and between stringers 5 and 11; repetitive inspections of the lower skin of the wings for cracking around stringers 6, 8, and 10, and around the WS 6 and WS 7 access panel doubler fingers; and repair if necessary. This AD was prompted by a report of a crack found on the lower skin of the right-hand wing between WS 5 and WS 6. We are issuing this AD to detect and correct fatigue cracking of the lower skin of the wings, which could result in reduced structural integrity of the wings.

DATES: This AD becomes effective May 10, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 10, 2013.

We must receive comments on this AD by June 10, 2013.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7306; fax (516) 794–5531; email: *jeffrey.zimmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Emergency Airworthiness Directive CF–2013–04, dated February 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> While performing a corrosion inspection of the wing internal structures, an operator discovered a crack of significant length between Wing Station (WS) 5 and 6, on the right hand wing lower skin of a Convair 580 aeroplane. Although an investigation is still ongoing to determine the cause, the crack appears to originate from a fastener located at the wing skin to wing access door doubler attachment.
>
> Previous repetitive external inspections of the wing lower skin in accordance with Structurally Significant Detail (SSD) 57–1–4, that was mandated by FAA AD 92–06–06, [Amendment 39–8186 (57 FR 9382, March 18, 1992)], did not detect the crack because the location of the crack is covered by the nacelle drag angle.
>
> Cracking of the wing lower skin at a fatigue critical area, if not detected, could compromise the structural integrity of the wing. This [TCCA] AD mandates internal visual and eddy current inspections to detect cracking of the wing lower skin to mitigate this unsafe condition. Transport Canada may mandate additional corrective actions [repair] pending the outcome of the failure investigation and fleet findings.
>
> The visual and eddy current inspections mandated by this [TCCA] AD are considered as Alternative Means of Compliance (AMOC) to the SSD 57–1–4 inspection that was mandated by FAA AD 92–06–06, for the locations addressed by the visual and eddy current inspections.

Corrective action includes repairing any cracking of the lower skin of the wings. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Kelowna Flightcraft Ltd. has issued Service Bulletin 340–57–001, dated February 12, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

The MCAI and Kelowna Flightcraft Service Bulletin 340–57–001, dated February 12, 2013, specify that operators with a damage rate factor (DRF) must divide 1,000 flight hours by their DRF to get the repetitive inspection interval. However, there are no U.S.-registered airplanes that have a DRF; therefore, this AD requires that the repetitive inspections be done at intervals not to exceed 1,000 flight hours.

The MCAI and Kelowna Flightcraft Service Bulletin 340–57–001, dated February 12, 2013, do not contain instructions to repair certain cracking conditions; however, this AD requires repairing those conditions using a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or TCCA (or its delegated agent).

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule based on the manufacturer's engineering analysis of the structural failure condition and flight hours/cycles on the affected fleet, which showed that certain areas of the lower skin of the wings must be inspected for fatigue cracking. Such fatigue cracking could result in reduced structural integrity of the wings. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2013–0330;

Directorate Identifier 2013–NM–051–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 70 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $35,700, or $510 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–10 Kelowna Flightcraft R & D Ltd.: Amendment 39–17427. Docket No. FAA–2013–0330; Directorate Identifier 2013–NM–051–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 10, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Tracor (Convair) Model 340 and 440 airplanes, including airplanes modified by Supplemental Type Certificates (STC) SA1096WE *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/BAB5BE3241FF1FD085256CC10080DDDC?OpenDocument&Highlight=sa1096we* (commonly referred to as Model 640 airplanes), STC SA6088NM *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/BEFFE27E85EAFF918625771 · 4007C8B4B?OpenDocument&Highlight=sa6088nm* (commonly referred to as Model 5800 airplanes), and STC SA4–1100 *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/AFD81364EE6A3EAC85256C C2000C5CC2?OpenDocument&Highlight=sa4-1100* (commonly referred to as Model 580 airplanes) and Military Model C–131B, C–131D, C–131E, and C131F/R4Y–1 airplanes; certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by a report of a crack found on the lower skin of the right-hand (RH) wing between wing station (WS) 5 and 6. We are issuing this AD to detect and correct fatigue cracking of the lower skin of the wings, which could result in reduced structural integrity of the wings.

(f) Compliance

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

(g) Repetitive Detailed Inspections

Within 20 flight hours after the effective date of this AD: Do a one-time detailed inspection for cracking of the lower skin of the left-hand (LH) and RH wings around the inboard side of the WS 6 and WS 7 access panel doubler fingers and between stringers 5 and 11, in accordance with the Accomplishment Instructions of Kelowna Flightcraft Service Bulletin 340–57–001, dated February 12, 2013. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(h) Repetitive Eddy Current Inspections

Within 100 flight hours after the effective date of this AD: Do an eddy current inspection for cracking of the lower skin of the LH and RH wings for cracking around stringers 6, 8, and 10, and around the WS 6 and WS 7 access panel doubler fingers, in accordance with the Accomplishment Instructions of Kelowna Flightcraft Service Bulletin 340–57–001, dated February 12, 2013. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(i) Repair

If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, repair using a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(j) Method of Compliance

The inspections required by this AD are approved as a method of compliance to the structurally significant detail (SSD) 57–1–4 inspection required by AD 92–06–06, Amendment 39–8186 (57 FR 9382, March 18, 1992), for only the locations addressed by the detailed and eddy current inspections specified in paragraphs (g) and (h) of this AD. Inspections at all other locations addressed by SSD 57–1–4 remain applicable.

(k) Reporting

Submit a report of the findings (both positive and negative) of each inspection required by paragraphs (g) and (h) of this AD to Kelowna Flightcraft Convair Division, 5655 Airport Way, Kelowna, Canada BC, V1V 1S1; telephone (250) 807–5416; fax (250) 765–7140; email *matt_palmberg@flghtcraft.ca;* at the

applicable time specified in paragraph (k)(1) or (k)(2) of this AD.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Emergency Airworthiness Directive CF–2013–04, dated February 14, 2013; and Kelowna Flightcraft Service Bulletin 340–57–001, dated February 12, 2013; for related information.

(n) Material Incorporated by Reference

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

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

(i) Kelowna Flightcraft Service Bulletin 340–57–001, dated February 12, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Kelowna Flightcraft Ltd., 5655 Airport Way, Kelowna, BC Canada, V1V 1S1; telephone (250) 807–5416; fax (250) 765–7140; Internet *http://www.flightcraft.ca/convair.asp*.

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

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

Issued in Renton, Washington, on April 8, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08987 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0880; Directorate Identifier 2012–CE–004–AD; Amendment 39–17422; AD 2013–08–05]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Model 525 airplanes equipped with certain part number (P/N) air conditioning (A/C) compressor motors. This AD was prompted by reports of smoke and/or fire in the tailcone caused by brushes wearing beyond their limits on the A/C motor. This AD requires inspection of the number of hours on the A/C compressor hour meter, inspection of the logbook, replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes, and reporting of airplane information related to the replacement of the brushes. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective May 30, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 30, 2013.

ADDRESSES: For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006; email: *customercare@cessna.textron.com*; Internet: *www.cessna.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Christine Abraham, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4165; fax: (316) 946–4107; email: *christine.abraham@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on December 6, 2012 (77 FR 72778). The original NPRM (77 FR 50644, August 22, 2012) proposed to require inspection of the number of hours on the A/C compressor hour meter, inspection of the logbook, and

replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes. The SNPRM proposed to retain the actions proposed in the original NPRM while revising proposed procedures for deactivating the A/C compressor motor.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request Removal of Statement About Operating Temperature Limitations

Cessna requested removal of the statement in paragraph (i) of the supplemental NPRM about the compressor: "While the system is deactivated, aircraft operators must remain aware of operating temperature limitations as detailed in the specific airplane flight manual."

Cessna stated that the Vapor Cycle Air Condition System (VCCS) is normally activated during defog operation. The VCCS is not essential for flight following the FAA's issued Master Minimum Equipment List (MMEL), but its deactivation will have an operational impact that should be identified. Cessna reasoned that there is no mention of the compressor in the airplane flight manual (AFM) temperature limitations section; consequently, the statement provides no value and should be removed.

We agree that the statement does not directly relate to the unsafe condition. In discussion with Cessna, we learned that the temperature limitations were inadvertently removed from later revisions to the AFM. In March 2013, Cessna issued a temporary change to add the temperature limitations back into the AFM. Since this temporary change was not included in certain revisions of the AFM, the temporary change will not be required for airplanes previously produced.

We changed the statement in the final rule AD action from an action statement to a recommendation in a note.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (77 FR 72778, December 6, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 72778, December 6, 2012).

Interim Action

We consider this AD interim action. The return of those brushes with a discernible amount of hours time-in-service (TIS) and the reporting requirement will enable us to determine whether the current 500-hour TIS limit and replacement intervals are appropriate. After we analyze the data received, we may take future rulemaking action.

Costs of Compliance

We estimate that this AD affects 408 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect and replace drive motor assembly brushes.	11 work-hours × $85 per hour = $935.	$252	$1,187	$484,296
Return shipment of brushes to the manufacturer.	$15 per return with two required returns.	Not applicable	30	12,240
Optional fabrication of placard for deactivation.	1 work-hour × $85 per hour = $85	Not applicable	85	34,680
Optional deactivation or reactivation.	1 work-hour × $85 per hour = $85	Not applicable	85	34,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–05 Cessna Aircraft Company: Amendment 39–17422; Docket No. FAA–2012–0880; Directorate Identifier 2012–CE–004–AD.

(a) Effective Date

This AD is effective May 30, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cessna Aircraft Company Model 525 airplanes, serial number (S/N) 525–0001 through 525–0558 and 525–0600 through 525–0701, that

(1) are equipped with part number (P/N) 1134104–1 or 1134104–5 air conditioning (A/C) compressor motor; and

(2) are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 21, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by reports of smoke and/or fire in the tailcone caused by brushes wearing beyond their limits on the A/C motor. We are issuing this AD to require replacement of the brushes on certain P/N A/C compressor motors or deactivation of the A/C system until replacement of the brushes. This AD also requires reporting of airplane information related to the replacement of the brushes.

(f) Compliance

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

(g) Inspections

Within the next 30 days after May 30, 2013 (the effective date of this AD) or within the next 10 hours time-in-service (TIS) after May 30, 2013 (the effective date of this AD), whichever occurs first, do the following:

(1) Inspect the number of hours on the A/C compressor hour meter; and

(2) Check the airplane logbook for any entry for replacing the A/C compressor motor brushes with new brushes or replacing the compressor motor or compressor condenser module assembly (pallet) with a motor or assembly that has new brushes.

(i) If the logbook contains an entry for replacement of parts as specified in paragraph (g)(2) of this AD, determine the number of hours on the A/C compressor motor brushes by comparing the number of hours on the compressor motor since replacement and use this number in paragraph (h) of this AD; or

(ii) If through the logbook check you cannot positively determine the number of hours on the A/C compressor motor brushes as specified in paragraph (g)(2)(i) of this AD, you must use the number of hours on the A/C compressor hour meter to comply with the requirements of this AD and use this number in paragraph (h) of this AD or presume the brushes have over 500 hours TIS.

(h) Replacement

At whichever of the compliance times in paragraph (h)(1) of this AD or paragraph (h)(2) of this AD occurs later, using the hour reading on the A/C compressor hour meter determined in paragraph (g) of this AD, replace the A/C compressor motor brushes with new brushes. Record the hours on the A/C compressor hour meter in the maintenance records at the time of replacement and repetitively thereafter replace the A/C compressor motor brushes no later than every 500 hours TIS on the A/C compressor motor. Do the replacement following Page 1, of Subject 4–11–00, dated April 23, 2012, of Cessna Aircraft Company Model 525 Maintenance Manual, Revision 23, dated July 1, 2012.

(1) Before or when the A/C compressor motor brushes reach a total of 500 hours TIS; or

(2) Before further flight after the inspection required in paragraph (g)(2)(ii) of this AD if the A/C compressor motor brush hours cannot be positively determined.

(i) Deactivation

In lieu of replacing the A/C compressor motor brushes, before or when the A/C compressor motor brushes reach a total of 500 hours TIS, you may deactivate the A/C. Remove the fuse limiter that supplies power to the A/C compressor motor, fabricate and install a placard that states: "A/C DISABLED." Install the placard by the A/C selection switch prohibiting use of the vapor cycle air conditioner and document deactivation of the system in the airplane logbook referring to this AD as the reason for deactivation.

Note 1 to paragraph (i) of this AD: While the system is deactivated, we recommend airplane operators remain aware of the operating temperature limitations found in the Cessna March 2013 temporary revision to the airplane flight manual.

(1) Do the steps in paragraphs (i)(1)(i) through (i)(1)(viii) of this AD to remove the compressor fuse limiter.

(i) Open aft baggage compartment.

(ii) Remove aft baggage compartment dividers.

(iii) Disconnect the main battery connector from the battery.

(iv) Tag the battery and external power receptacle with a warning tag that reads: "WARNING: Do not connect the battery connector or external power cart during the maintenance in progress."

(v) Remove wing nuts that attach the cover to the aft power J-Box.

(vi) Remove the aft power J-Box cover.

(vii) Remove nuts securing compressor fuse limiter (Reference Designator HZ028, P/N ANL100) to bus bar. Retain nuts.

(viii) Remove the compressor motor fuse limiter from the terminals and retain for future reinstallation once compressor motor brushes have been replaced.

(2) A properly certified mechanic must fabricate and install the placard as specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD:

(i) Use 1/8-inch black lettering on a white background; and

(ii) Install the placard on the instrument panel in close proximity to the A/C selection switch.

(3) Do the steps in paragraphs (i)(3)(i) through (i)(3)(v) of this AD to return the airplane to service with the compressor motor fuse limiter removed.

(i) Install fuse limiter nuts on the terminals and torque to 100 inch-pounds +5 or −5 inch-pounds.

(ii) Install the aft power J-Box cover with the wing nuts.

(iii) Remove the warning tag on the battery and external power receptacle.

(iv) Connect battery connector to battery.

(v) Install aft baggage compartment dividers.

(4) If you choose to deactivate the system and then later choose to return the A/C system to service: Before returning the A/C system to service and removing the placard, you must apply the inspection and replacement requirements of the brushes as specified in paragraph (g) and (h) of this AD.

(j) Return of Replaced Parts and Reporting Requirement

For the first two A/C compressor motor brush replacement cycles, within 30 days after the replacement or within 30 days after the effective date of this AD, whichever occurs later, send the brushes that were removed to Cessna Aircraft Company, Cessna Service Parts and Programs, 7121 Southwest Boulevard, Wichita, KS 67215. Provide the information in paragraphs (j)(1) through (j)(6) of this AD with the brushes:

(1) The Model and S/N of the airplane;

(2) P/N of motor;

(3) P/N of the brushes, if known;

(4) The elapsed amount of motor hours since the last brush/motor replacement, if known;

(5) If motor hours are unknown, report the elapsed airplane flight hours since the last brush/motor replacement and indicate that motor hours are unknown; and

(6) Number of motor hours currently displayed on the pallet hour meter.

(k) Special Flight Permit

Special flight permits are permitted with the following limitation: Operation of the A/C system is prohibited.

(l) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the

burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(n) Related Information

For more information about this AD, contact Christine Abraham, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4165; fax: (316) 946–4107; email: *christine.obrohom@foo.gov*.

(o) Material Incorporated by Reference

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

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

(i) Page 1, of Subject 4–11–00, dated April 23, 2012, of Cessna Aircraft Company Model 525 Maintenance Manual, Revision 23, dated July 1, 2012.

(ii) Reserved.

(3) For Cessna Aircraft Company service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006; email: *customercore@cessna.textron.com*; Internet: *www.cessno.com*.

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

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

Issued in Kansas City, Missouri, on April 8, 2013.

Earl Lawrence,

Manoger, Small Airplone Directorote, Aircraft Certificotion Service.

[FR Doc. 2013–09214 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1004; Airspace Docket No. 12–ANM–21]

RIN 2120–AA66

Modification of VOR Federal Airway V–595, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VHF omnidirectional range (VOR) Federal airway V–595 in Oregon due to the scheduled decommissioning of the Portland, OR, VOR/DME navigation aid, which currently serves as an end point for the route.

DATES: Effective date 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On October 22, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify V–595 in Oregon (77 FR 64444). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received.

The original proposal would have terminated V–595 at the HARZL navigation fix which is approximately 29 NM southeast of the Portland VOR/DME. Subsequent to publication of the NPRM, it was determined that mountainous terrain in the area would limit the service volume of the Deschutes, OR, VORTAC to a degree that the Deschutes VORTAC could not be used to identify the entire length of the proposed segment between Deschutes and the HARZL fix.

Consequently, the FAA issued a supplemental NPRM (SNPRM) (78 FR 9009, February 7, 2013) to solicit comments on a proposed further modification of V–595 to delete the entire segment between Deschutes VORTAC and the Portland VOR/DME. No comments were received in response the SNPRM.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airway V–595 due to the scheduled decommissioning of the Portland, OR, VOR/DME. This action removes that segment of V–595 between the Portland, OR, VOR/DME and the Deschutes, OR, VORTAC. By separate rulemaking action, the FAA has proposed to establish new area navigation routes (T-routes) to provide additional navigation options in the affected area (78 FR 4354, January 22, 2013.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9W signed August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies a VOR Federal airway due to navigation aid infrastructure changes.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action consists of a modification of an existing airway and is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

V–595 [Amended]

From Rogue Valley, OR, to Deschutes, OR.

Issued in Washington, DC, on April 10, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–09566 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0903; FRL–9793–5]

Approval and Promulgation of Implementation Plans; Oregon: Open Burning and Enforcement Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Oregon on February 16, 2001, July 14, 2005, August 28, 2006, and May 20, 2008 that relate to open burning rules, enforcement procedures, civil penalties, and procedures in contested cases (appeals). These revisions were made to the Oregon Administrative Rules (OAR) Chapter 340, Division 264 (OAR 340–264), OAR 340–012, and OAR 340–011. The EPA is approving the SIP revisions because the revisions clarify and strengthen the SIP and meet the criteria of the Clean Air Act.

DATES: This final rule is effective on May 28, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2008–0903. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information may not be publicly available, *i.e.*, confidential business information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553–6125, *spenillo.justin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" are used, it is intended to refer to the EPA.

Table of Contents

I. Background

Title I of the Clean Air Act (CAA), as amended by Congress in 1990, specifies the general requirements for states to submit State Implementation Plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) and the EPA's actions regarding approval of those SIPs. The EPA is approving the SIP revisions submitted by the State of Oregon on February 16, 2001, July 14, 2005, August 28, 2006, and May 20, 2008. These revisions relate to open burning rules, enforcement procedures, civil penalties, and procedures in contested cases (appeals). On January 7, 2013 (78 FR 918) the EPA published a notice of proposed rulemaking (NPR), proposing approval of the revisions. The NPR includes a detailed description and analysis of the revisions, and rationale for this final action. A brief summary is provided below.

Oregon's February 16, 2001 submittal recodifies and revises the Oregon Department of Environmental Quality's (ODEQ) open burning regulations, now codified at OAR 340–264. The EPA proposed to determine that the revisions to OAR 340–264 either clarify or do not affect the overall stringency of the ODEQ's open burning regulations, and that approval of the revisions will not interfere with attainment or maintenance of the NAAQS or other requirements of the CAA as described in the EPA's proposed rule.

Oregon's July 14, 2005, August 28, 2006, and May 20, 2008 SIP submittals relate to enforcement procedures, civil penalties, and procedures in contested cases (appeals). OAR 340–012 Enforcement Procedures and Civil Penalties contains enforcement procedures and civil penalty provisions that apply to the air quality regulations in the Oregon SIP. The revisions to OAR 340–012 clarify the differences between formal and informal enforcement processes, make adjustments to the penalty matrices, and streamline and reorganize the rules to more closely track the ODEQ's enforcement and penalty calculation process. The EPA proposed to find that these revisions continue to provide the ODEQ with adequate authority for enforcing the SIP as required by Section 110 of the CAA and 40 CFR 51.230(b). OAR 340–011 Rules of General Applicability and Organization contain procedures in contested cases (appeals of the ODEQ actions). The EPA proposed to determine that these rule revisions improve the clarity and completeness of contested case appeals coming before the Environmental Quality Commission and provide the authority needed for implementing the SIP.

EPA provided a 30-day review and comment period on the January 7, 2013 (78 FR 918) NPR. No comments were received on the NPR and the EPA is now taking final action to approve the proposed revisions.

II. Final Action

The EPA is approving and incorporating by reference the re-numbering of OAR 340–264 to replace OAR 340–23 and the revisions to Oregon's open burning rules, OAR 340–264, submitted by the ODEQ on February 16, 2001.

The EPA is approving but not incorporating by reference the enforcement provisions in OAR 340–012 submitted by the ODEQ on July 14, 2005 and August 28, 2006, subject to the qualifications and in the manner discussed below. First, where ODEQ submitted a regulation in Division 12 as part of its July 14, 2005 submittal and that regulation was subsequently revised and submitted as part of ODEQ's August 28, 2006 submittal, EPA is approving the version of the regulation submitted as part of the August 28, 2006 submittal. The docket contains a chart showing the version of the regulations in Division 12 we are approving. Second, EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of Section 110 of the CAA. Therefore, EPA is not approving the following regulations in Division 12 that do not relate to air emissions: OAR–340–012–0055, –0060, –0065, –0066, –0067, –0068, –0071, –0072, –0074, –0079, –0081, –0083, –0097. In addition, EPA is approving the remaining sections in Chapter 340, Division 12 only to the extent they relate to enforcement of requirements contained in the Oregon SIP. Finally, although the EPA is approving the rules in Division 12 in the manner discussed above, the EPA is not incorporating these rules by reference into the Code of Federal Regulations because the EPA relies on its independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

Finally, the EPA is approving but not incorporating by reference revisions related to procedures in contested cases (that is, appeals from the ODEQ actions) found at OAR 340–011. These revisions were submitted by the ODEQ on May 20, 2008. It is not appropriate to incorporate these rules by reference,into the Code of Federal Regulations because the EPA relies on its own administrative and enforcement procedures in enforcing the CAA.

The EPA is taking no action on the revisions to OAR 340–200–0040 in each of the ODEQ's SIP submittals (February 16, 2001, July 14, 2005, August 28, 2006, and May 20, 2008) because it is unnecessary to take action on this provision addressing State SIP adoption procedures and because the Federally-approved SIP consists only of regulations and other requirements that have been submitted by the ODEQ and approved by the EPA.

Finally, the EPA is taking no action on the expedited enforcement process set forth in OAR 340–150 –0250 Expedited Enforcement Process for underground storage tanks included in the ODEQ's July 14, 2005 submittal because this section applies to underground storage tank regulations and does not relate to attainment or maintenance of the NAAQS or other requirements of section 110 of the CAA.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 the 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 June 24, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 13, 2013.

Dennis J. McLerran,

Regional Administrator. Region 10.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraphs (c)(116)(i)(D) and (c)(156) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(116) * * *

(i) * * *

(D) Based on a SIP revision submitted by Oregon on February 16, 2001, Oregon Administrative Rules Chapter 340, Division 23 "Rules for Open Burning," as effective March 10, 1993, is removed from the SIP.

* * * * *

(156) On February 16, 2001, May 13, 2005, March 29, 2006, and March 20, 2008, the Oregon Department of Environmental Quality submitted revisions to the Oregon Administrative Rules (OAR) Chapter 340 as revisions to the Oregon State Implementation Plan (SIP). The submissions relate to Oregon's open burning rules, enforcement procedures, civil penalties, and procedures in contested cases (appeals).

(i) Incorporation by reference.

(A) The following sections of the OAR Chapter 340, Division 264, effective December 15, 2000: Division 264, Rules For Open Burning: Rule 0010 How to Use These Open Burning Rules; Rule 0020 Policy; Rule 0030 Definitions; Rule 0040 Exemptions, Statewide; Rule 0050 General Requirements Statewide: Rule 0060 General Prohibitions Statewide; Rule 0070 Open Burning Conditions; Rule 0075 Delegation of Authority; Rule 0078 Open Burning Control Areas; Rule 0080 County Listing of Specific Open Burning Rules; Rule 0100 Open Burning Requirements, Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties; Rule 0110 Open Burning Requirements, Benton, Linn, Marion, Polk, and Yamhill Counties; Rule 0120, Open Burning Requirements, Clackmas County; Rule 0130, Open Burning Requirements, Multnomah County; Rule 0140 Open Burning Requirements, Washington County; Rule 0150 Open Burning Requirements, Columbia County; Rule 0160 Open Burning Requirements, Lane County; Rule 0170 Open Burning Requirements, Coos, Douglas, Jackson and Josephine Counties; Rule 0180 Open Burning Requirements, Letter Permits, Rule 0190 Open Burning Requirements, Forced-Air Pit Incinerators.

(B) [Reserved.]

(ii) Additional Material:

(A) The following revised sections of Oregon Administrative Rules Chapter 340 effective May 13, 2005: Division 12 Enforcement Procedures and Civil Penalties: Rule 0026 Policy, Rule 0028 Scope of Applicability, Rule 0030 Definitions, Rule 0038 Warning Letters, Pre-Enforcement Notices and Notices of Permit Violation, Rule 0041 Formal Enforcement Action, Rule 0042 Determination of Base Penalty, Rule 0045 Civil Penalty Determination Procedure, Rule 0145 Determination of Aggravating or Mitigating Factors, Rule 0150 Determination of Economic Benefit, Rule 0160 Department Discretion Regarding Penalty Assessment, Rule 0162 Inability to Pay the Penalty, Rule 0165 Stipulated Penalties, Rule 0170 Compromise or Settlement of Civil Penalty by Department.

(B) The following revised sections of Oregon Administrative Rules Chapter 340 effective March 29, 2006: Division 12 Enforcement Procedures and Civil Penalties: Rule 0027 Rule Effective Date, Rule 0053 Violations that Apply to all Programs, Rule 0054 Air Quality Classification of Violations, Rule 0073 Environmental Cleanup Classification of Violation, Rule 0082 Contingency Planning Classification of Violations, Rule 0130 Determination of Violation Magnitude, Rule 0135 Selected Magnitude Categories, Rule 0140 Determination of Base Penalty, Rule 0155 Additional or Alternate Civil Penalties.

(C) The following revised sections of Oregon Administrative Rules Chapter 340 effective March 20, 2008: Division 11, Rules of General Applicability and Organization, Rule 0005 Definitions, Rule 0009 Incorporation of Attorney General's Uniform and Model Rules, Rule 0510 Agency Representation by Environmental Law Specialist, Rule 0515 Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing, Rule 0573 Proposed Orders in Contested Cases, Rule 0575 Review of Proposed Orders in Contested Cases.

[FR Doc. 2013–09695 Filed 4–24–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0397; FRL–9383–1]

Bacillus mycoides Isolate J; Time-Limited Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the requirement of a tolerance for residues of *Bacillus mycoides* isolate J in or on potato, when used in accordance with the terms of the section 18 emergency exemption. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on potato. The time-limited exemption from the requirement of a tolerance expires on December 31, 2015.

DATES: This regulation is effective April 25, 2013. Objections and requests for hearings must be received on or before June 24, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0397, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Debra Rate, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 306–0309; email address: *rate.debra@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0397 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 24, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0397, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited exemption from the requirement of a tolerance for *Bacillus mycoides* isolate J, in or on potato. This time-limited exemption from the requirement of a tolerance expires on December 31, 2015.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement of a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances and exemptions from the requirement of a tolerance can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances or exemptions to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *"

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Emergency Exemption for *Bacillus mycoides* isolate J on Potato and Exemption From the Requirement of a Tolerance

The Montana Department of Agriculture requested a specific emergency exemption, for the use of the unregistered active ingredient (ai), *Bacillus mycoides* isolate J (BmJ), to control tuber infections caused by potato virus Y (PVY), on generation 1 (G1) and generation 2 (G2) potatoes grown for certified seed potato stock. There are no registered alternatives to control PVY infections, only registered alternatives that inadequately control the aphids which vector the virus. The Montana Department of Agriculture, requested use for 2,675 acres of seed potato.

After having reviewed the submission, EPA determined that an emergency condition existed for this State, and that the criteria for approval of an emergency exemption were met. Accordingly, EPA authorized a specific exemption under FIFRA section 18 for the use of *Bacillus mycoides* isolate J on potato for control of PVY in Montana.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of *Bacillus mycoides* isolate J in or on potato. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary exemption from the requirement of a tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this exemption from the requirement of a tolerance without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). This time-limited exemption from the requirement of a tolerance expires on December 31, 2015. EPA will take action to revoke the time-limited exemption from the requirement of a tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues are not safe.

Because this time-limited exemption from the requirement of a tolerance is being approved under emergency conditions, EPA has not made any decisions about whether *Bacillus mycoides* isolate J meets FIFRA's registration requirements for use on potato or whether permanent tolerances or exemption from the requirement of a tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited exemption from the requirement of a tolerance serves as a basis for registration of *Bacillus mycoides* isolate J by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the authority for persons in any State other than Montana to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for *Bacillus mycoides* isolate J, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by *Bacillus mycoides* isolate J, are discussed in this unit. Refer to risk assessments in docket number EPA–HQ–OPP–2005–0303 with the titles: (1) BPPD Review of Product Chemistry and Toxicity/Pathogenicity Data Submitted by Montana Microbial Products, for EUP of BmjJ WP, which contains *Bacillus mycoides* isolate J and (2) Ecological Risk Assessment for *Bacillus mycoides* Isolate J, for additional information.

The stomach is a hostile environment for most microbes, as most oral exposure to microbes, leads to inactivation by stomach acids, proteases, and subsequently bile salts (Ref. 1). In contrast, a pulmonary exposure study provides those microbes that are capable of infecting mammals with the greatest opportunity to express infectivity by directing them into the lungs, from where they may enter the bloodstream and other organs. Therefore, a microbe that does not show significant infectivity in a pulmonary exposure study, presents negligible risk via oral exposure.

An Acute Pulmonary Toxicity/Pathogenicity study (OPPTS 885.3150) in rats which were dosed intratracheally with *Bacillus mycoides* isolate J at 1.1×10^8 cfu/animal, did not show complete clearance from all organs during the study's 35-day length. The test substance, however, did show a pattern of clearance in most organs. This is similar to what has been observed with other spore forming bacteria. Differential heat treatment of tissue samples showed that most of the recovered organisms were spores which are quiescent forms of this bacterium. Spores routinely take long periods to be cleared from pulmonary exposures (Ref. 2). Bacteria form spores when conditions do not support growth, so the predominance of spores among the *Bacillus mycoides* isolate J recovered from animal tissue, therefore indicates little infectivity. No treated animals died and there were no signs in the animals of toxicity or pathogenicity.

Associated with the manufacture of *Bacillus mycoides* isolate J, as well as all exposures during the previous experimental use permits, more than 20 people have worked with *Bacillus mycoides* isolate J for over 8 years, and no adverse effects or incidents of hypersensitivity reaction have been reported associated with *Bacillus mycoides* isolate J in the routine use of the experimental product.

Given the ubiquitous nature of this bacterium on plants, in soil, water, air, and decomposing plant tissue (Ref. 3), the lack of reported human pathogenicity, along with the lack of mortality of the test animals, and the absence of overt signs of toxicity or pathogenicity in the animals during the course of this pulmonary study, there is not expected to be an increase in dietary exposure or threshold effects of concern to infants and children when *Bacillus mycoides* isolate J is used as a foliar treatment on seed potatoes.

This finding is consistent with a previously granted food-use experimental use permit (82761–EUP–2), where the Agency granted requests for waivers for Acute Oral Toxicity and Pathogenicity (OPPTS 885.3050); Acute Injection Toxicity and Pathogenicity (OPPTS 885.3200); Acute Oral Toxicity (OPPTS 870.1100); Acute Inhalation Toxicity (OPPTS 870.1300) mammalian studies for *Bacillus mycoides* isolate J, based on the following:

1. *Bacillus mycoides* is not reported as a human pathogen, or as a cause of foodborne illness, food spoilage, or plant diseases, and does not persist on plant surfaces. Due to the ubiquitous level of *Bacillus mycoides* present in agricultural soils, there has been long term human exposure to *Bacillus mycoides* in crops and to residual *Bacillus mycoides* cells or spores in food crops (Ref. 3). No toxicity, infectivity, or pathogenicity of *Bacillus mycoides* in humans was reported in numerous searched citations.

2. *Bacillus mycoides* is readily differentiable from other *Bacillus cereus* group organisms in production batches (including *Bacillus thuringiensis*, *Bacillus pseudomycoides*, *Bacillus anthracis*, *Bacillus cereus*, and *Bacillus weihenstephanensis*) and well defined quality control procedures are established to keep contaminants from fermentation batches during the production of *Bacillus mycoides* isolate J.

3. In connection with the manufacture of *Bacillus mycoides* isolate J, no adverse effects or incidents of hypersensitivity reaction have been reported associated with *Bacillus mycoides* isolate J in the routine use of the experimental product in a laboratory setting. Any such effects would be subject to the reporting requirements of 40 CFR 166.32(a) and guidelines for reporting Hypersensitivity Incidents (OPPTS 885.3400).

V. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-

occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The authorized section 18 emergency exemption is not expected to result in increased dietary exposures of *Bacillus mycoides* isolate J to the general population based on the following:

1. *Food.* The section 18 emergency exemption is for foliar application on plants, grown from first and second generation seed potatoes grown for seed stock. Only a small fraction of seed potatoes collected from treated plants may enter the food chain as livestock feed. The quantity of *Bacillus mycoides* isolate J applied to plant foliage, 7.5×10^{11} spores/acre per application, is small compared to the natural background levels of *Bacillus mycoides.*

In agricultural soils, *Bacillus mycoides* typically occurs at about 10^5 spores per gram. In persistence studies, performed on a variety of crops (including peppers, potatoes, and sugar beets), the titer of *Bacillus mycoides* isolate J applied to the foliage typically declines from 10^6 spores/cm^2 to between 100 and 1,000 spores/cm^2 over a 2-week period. Specifically in potatoes, spores applied to foliage will not directly contact tubers. Tubers are exposed to natural soil concentrations of *Bacillus mycoides* that exceed the quantity of *Bacillus mycoides* isolate J spores applied to potato foliage (Ref. 3).

2. *Drinking water exposure.* According to the World Health Organization, *Bacillus* species are often detected in drinking water even after going through acceptable water treatment processes, largely because the spores are resistant to these disinfection processes (Ref. 4). Should this microbial pesticide be present, no adverse effects are expected from exposure to *Bacillus mycoides* through drinking water, based on the results of toxicity studies described in Unit IV.

B. Other Non-Occupational Exposure

Natural background levels of *Bacillus mycoides* are reported to typically occur at about 10^5 spores per gram in agricultural soils. Use of *Bacillus mycoides* isolate J pursuant to the section 18 emergency exemption is not likely to result in increased exposure in the general population because the 2,675 treated acres are not accessible to the general population.

VI. Cumulative Effects

Pursuant to section 408(b)(2)(D)(v) of FFDCA, EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common method of toxicity. Because there is no indication of mammalian toxicity or pathogenicity resulting from exposure to *Bacillus mycoides* isolate J, we conclude that there are no cumulative effects for this bacterium.

VII. Determination of Safety for U.S. Population, Infants, and Children

The Agency has determined that there is reasonable certainty that no harm will result to the U.S. population from exposure to residues of *Bacillus mycoides* isolate J in connection with the section 18 emergency exemption. This determination includes all anticipated dietary exposures and other non-occupational exposures for which there is reliable information. Oral ingestion of the *Bacillus mycoides* isolate J organism on potatoes treated under the section 18 emergency exemption is unlikely because the portion of the potato plant that is treated is not intended for human or livestock consumption.

Data submitted in a pulmonary toxicity/pathogenicity study performed at doses several orders of magnitude above expected exposure revealed no signs of overt toxicity or pathogenicity in the test animals. The pulmonary exposure route is more sensitive than an oral exposure study which has the various inactivation processes discussed in Unit IV. The results of an extensive literature search, which included numerous citations of the test organism, yielded no reports of its pathogenicity for mammals (Ref. 5).

Section 408(b)(2)(C) of FFDCA provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, section 408(b)(2)(C) of FFDCA also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin will be safe for infants and children. In the absence of specific studies showing that infants and children are not at risk, the Agency has retained a 10X safety factor to account for gaps in the database for *Bacillus mycoides* isolate J. In this instance, however, based on all available information, the Agency concludes that *Bacillus mycoides* isolate J presents no oral toxicity effects of concern. Thus, there are no threshold effects of concern to infants and children when *Bacillus mycoides* isolate J is used in accordance with the authorized section 18 use directions.

VIII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient, *Bacillus mycoides* isolate J is not known to exert an influence on the endocrine system.

B. Analytical Method(s)

Analytical methods for *Bacillus mycoides* isolate J that are sufficient to justify the issuance of the section 18 emergency exemption have been submitted to the Agency. An enforcement analytical method is not required to support an exemption from the requirement of a tolerance.

C. Codex Maximum Residue Level

No codex maximum residue levels exist for the microbial *Bacillus mycoides* isolate J.

IX. Conclusion

Therefore, a time-limited exemption from the requirement of a tolerance is established for residues of *Bacillus mycoides* isolate J, in or on potatoes. This time-limited exemption from the requirement of a tolerance expires on December 31, 2015.

X. References

1. Martinsen, T.C., Bergh, K. & Waldrum, H.L., (2005) Gastric Juice: A Barrier Against Infectious Diseases, Basic and Clinical Pharmacology and Toxicology, vol. 96: 94–102.
2. USEPA. Prevention, Pesticides and Toxic Substances. Reregistration Eligibility Decision (RED) *Bacillus thuringiensis.* EPA738–R–98–004. March 1998.
3. Ludwig, W., Schleiffer, Whitman, W.H. (2009) Class I: Bacilli, class. nov., in "Bergey's Manual of Systematic Bacteriology", 2nd Edition, Volume 3, The Firmicutes, P. DeVos, G.M. Garrity, D. Jones, N.R.Krieg, W. Ludwig, K.H. Schleiffer, & W.B. Whitman (eds.) Springer Publishing.
4. World Health Organization, Guidelines for Drinking-Water Quality. (2011) Fourth Edition.
5. Logan, N.A. & Turnbull, P.C.B. (2003) Bacillus and other Endospore-forming Bacteria, Chap 32. in "Manual of Clinical

Microbiology" 8th edition, P.R.Murray, E.J. Baron. J.H. Jorgensen, M.A. Pfaller & R.H. Yolken (eds), ASM Press.

XI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA (15 U.S.C. 272 note).

XII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 2013.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Revise § 180.1269 to read as follows:

§ 180.1269 *Bacillus mycoides* isolate J; exemption from the requirement of a tolerance.

Bacillus mycoides isolate J is temporarily exempt from the requirement of a tolerance when used as a fungicide on potatoes in accordance with a valid Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 18 emergency exemption. This temporary exemption from the requirement of a tolerance expires and is revoked on December 31, 2015.

[FR Doc. 2013–09706 Filed 4–24–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA–2004–19605; Amendment No. 1572–10]

Provisions for Fees Related to Hazardous Materials Endorsements and Transportation Worker Identification Credentials

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is removing specific fee amounts from regulations regarding security threat assessments (STAs) and credentialing for Hazardous Materials Endorsements (HMEs) and Transportation Worker Identification Credentials (TWICs). These provisions include State collection of the HME fee, TSA collection of the HME fee, and collection of the TWIC fee. Removing specific fee references will enable TSA to have the necessary flexibility to lower or increase fees as necessary to meet the statutory obligation to recover its costs. Current fee amounts as identified in these sections will remain unchanged until any future revisions to fee schedules are published in the **Federal Register**.

DATES: Effective May 28, 2013.

FOR FURTHER INFORMATION CONTACT: Carolyn Mitchell, Office of Intelligence and Analysis (OIA), TSA–10, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6010; telephone (571) 227–2372; email *carolyn.mitchell@dhs.gov*.

For legal questions: Traci Klemm, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–3596; facsimile (571) 227–1378; email *traci.klemm@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page 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* to view the daily published **Federal Register** edition; or accessing the "Search the **Federal Register** by

Citation" in the "Related Resources" column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for "Stakeholders" at the top of the page, then the link "Research Center" in the left column.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Abbreviations and Terms Used in This Document

CDL—Commercial Driver's License
CHRC—Criminal History Records Check
FBI—Federal Bureau of Investigation
HME—Hazardous Materials Endorsement
IFR—Interim Final Rule
MTSA—Maritime Transportation Security Act
STA—Security Threat Assessment
TWIC—Transportation Worker Identification Credential

Background

Approximately 2 million workers, including United States Coast Guard (Coast Guard)-credentialed merchant mariners, port facility employees, longshore workers, truck drivers, and others requiring unescorted access to secure areas of maritime facilities and vessels regulated under the Maritime Transportation Security Act (MTSA)[1] must successfully complete a security threat assessment (STA) and hold a Transportation Worker Identification Credential (TWIC) in order to enter secure areas without an escort.[2] TSA conducts the STA and issues the credential, and the Coast Guard enforces the use of the TWIC at MTSA-regulated facilities. As required by MTSA, the STA includes checks of criminal history records, legal status and relevant international databases.[3]

As part of the process for obtaining a TWIC, applicants must pay a fee made up of three segments: Enrollment Segment, Full Card Production/Security Threat Assessment Segment, and Federal Bureau of Investigation (FBI) Segment.[4] Most applicants pay the Standard TWIC Fee, which includes all three segments. Applicants who have completed a comparable threat assessment, such as the threat assessment TSA conducts on commercial drivers with a Hazardous Materials Endorsement (HME), pay a reduced TWIC Fee due to TSA's ability to confirm and leverage the existing, ongoing STA.[5]

In the TSA Hazardous Materials Endorsement Threat Assessment Program (HME Program), TSA conducts an STA for any driver seeking to obtain, renew, or transfer a HME on a State-issued commercial driver's license (CDL). The program was implemented to meet a statutory requirement that prohibits States from issuing a license to transport hazardous materials (hazmat) in commerce unless a determination has been made that the driver does not pose a security risk. The Act further requires that the risk assessment include checks of criminal history records, legal status, and relevant international databases.[6]

Applicants for an HME pay a fee to cover the (1) costs of performing and adjudicating STAs, appeals and waivers (Threat Assessment Fee); (2) the costs of collecting and transmitting fingerprints and applicant information (Information Collection Fee); and (3) the fee charged by the FBI to perform a criminal history records check (CHRC), which is referred to as the "FBI Fee."[7] States that choose to collect applicant information directly and submit it to TSA may charge applicants a State fee for that service, and TSA has no regulatory authority to control or determine that fee.

Currently, TWIC and HME fee amounts, which reimburse TSA for the costs of administering the programs, have been specifically identified in current 49 CFR 1572.403 (State collection of HME fees), 1572.405 (TSA collection of HME fees), and 1572.501 (collection of TWIC fee). With this rule, TSA is removing specific fee amounts for these programs in 49 CFR part 1572. Current fee amounts as identified in these sections will remain unchanged until any future revisions to fee schedules are published as a Notice in the **Federal Register.**

These revisions to 49 CFR part 1572 enable TSA to meet its statutory mandate to recover the costs of these programs, continue to fund these programs on an ongoing basis, provide notice to affected stakeholders of any revisions to the fees, and meet contractual obligations with vendors. These revisions are also consistent with guidance in the Office of Management and Budget Circular A–25,[8] which suggests that "[w]henever possible, charges should be set as rates rather than fixed dollar amounts in order to adjust for changes in costs to the Government * * *." Circular A–25 6.a (2)(d).

This final rule consists of an administrative revision. Therefore, there are no industry costs associated with the proposal. TSA costs for implementing the proposed rule would consist of administrative costs largely covered by current operations and therefore considered de minimis.

Legal Authority To Collect Fees

The Maritime Transportation Security Act required the Department of Homeland Security (DHS) to issue regulations to prevent individuals from entering secure areas of vessels or MTSA-regulated port facilities unless such individuals undergo a successful STA and hold TWICs.[9] In addition, nearly all credentialed merchant mariners are required to hold these transportation security cards.[10] MTSA also required DHS to establish a waiver and appeals process for persons found to be ineligible for the required transportation security card.[11]

Under 49 U.S.C. 5103a, a State is prohibited from issuing or renewing a CDL unless the Secretary of Homeland Security has first determined that the

[1] *See* 46 U.S.C. 70105.

[2] *See* 33 CFR 105.514. *See also* 72 FR 3492 (Jan. 25, 2007) (TWIC and HME Final Rule).

[3] *See* 46 U.S.C. 70105.

[4] *See* TWIC and HME Final Rule at 3506.

[5] These applicants are not charged for the FBI Segment and pay a reduced fee for the Full Card Production/Security Threat Assessment Segment.

[6] *See* 69 FR 68720 (Nov. 24, 2004) (HME Program Interim Final Rule (IFR)) and the TWIC and HME Final Rule for more background information on the HME Program.

[7] 70 FR 2542 (Jan. 13, 2005) (HME Fees Final Rule).

[8] Available at *http://www.whitehouse.gov/omb/circulars_a025.*

[9] *See* sec. 105 of MTSA (Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002)), codified at 46 U.S.C. 70105, as amended by the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (October 13, 2006).

[10] As noted in the Fall 2012 Regulatory Agenda, the Coast Guard is currently revising its merchant mariner credentialing regulations to implement changes made by sec. 809 of the Coast Guard Authorization Act of 2010, codified at 46 U.S.C. 70105(b)(2), which reduces the population of mariners who are required to obtain and hold a valid TWIC.

[11] *See* 46 U.S.C. 70105(c)(3).

driver does not pose a security threat warranting denial of the HME.[12] HME program regulations require States to choose between two fingerprint collection options: (1) The State collects and transmits the fingerprints and applicant information of drivers who apply to renew or obtain an HME; or (2) the State chooses to have a TSA agent collect and transmit the fingerprints and applicant information of such drivers.[13] Under the regulations, States were required to notify TSA in writing of their choice by December 27, 2004, and are required to maintain that choice for at least three years.

Congress directed TSA to collect user fees to cover the costs of its transportation vetting and credentialing programs.[14] TSA must collect fees to pay for conducting or obtaining a CHRC; reviewing pertinent law enforcement databases, and records of other governmental and international agencies; reviewing and adjudicating requests for waivers and appeals of TSA decisions; and any other costs related to conducting the STA or providing a credential.

The statute requires that any fee collected must be available only to pay for the costs incurred in providing services in connection with performing the STA or providing the credential. The funds generated by the fee do not have a limited period of time in which they must be used; as fee revenue and service costs do not always match perfectly for a given period, a program may need to carry over funding from one fiscal year to the next to ensure that sufficient funds are available to continue normal program operations. TSA complies with applicable requirements, such as the The Chief Financial Officers (CFOs) Act of 1990[15] and Office of Management and Budget Circular A–25,[16] regularly reviewing the fee program to ensure that fees correctly recover, but do not exceed, the full cost of services and making appropriate adjustments to the fees.

Current Fees

The following table identifies current fees for obtaining a TWIC[17] or HME.[18]

TABLE 1—CURRENT TWIC AND HME FEES

	TWIC (49 CFR 1572.501)	HME (collected by State) (49 CFR 1572.403)	HME (collected by TSA or its agent) (49 CFR 1572.405)
Enrollment Segment or costs for TSA or its agent to enroll applicants.	$43.25	N/A	$38.00.
STA Segment or costs for TSA to conduct security threat assessment and produce cards.	$72.00	$34.00	$34.00.
FBI Segment or costs for fingerprint identification records.	Determined by FBI*	Determined by FBI*	Determined by FBI.*
Card Replacement	$60.00	N/A	N/A.

*Currently set at $14.50. *See* 76 FR 78950 (Dec. 20, 2011).

There are reduced fees for TWIC applicants if they have undergone a comparable threat assessment.[19] There are reduced fees for HME applicants if they have undergone a comparable threat assessment (TWIC STA) and the issuing State chooses to offer comparability to HME applicants.

Standards and Guidelines Used to Calculate the Fees

TSA has a statutory obligation to recover its costs for the HME and TWIC STA programs through user fees. These fees pay for TSA's costs for administering the program. Pursuant to the general user fee statute (31 U.S.C. 9701) and OMB circular A–25, TSA establishes user fees after providing the public notice and an opportunity to comment on the charge and the methodology TSA will use to develop the fee amount.

Methodology Used to Calculate the Fees

The methodology and considerations supporting TWIC fee determinations are explained in detail in the preamble to the TWIC Final Rule.[20] The standard TWIC fee includes cost components associated with enrollment and credential issuance; threat assessment and adjudication including appeals and waivers; card production; TSA program and systems costs; and the FBI fee to conduct the CHRC.

The methodology and considerations supporting the HME fee determinations were explained in detail in the preamble to the HME Fees Final Rule.[21] The standard HME fee includes cost components associated with enrollment; threat assessment and adjudication including appeals and waivers; TSA program and systems costs; and the FBI fee to conduct the CHRC. States have the option to collect and transmit an applicant's biographic and biometric information directly to TSA, or the State may elect to use the TSA agent to collect and transmit applicant biographic and biometric data. For States that choose to collect applicant data, the enrollment component of the fee may vary by State, but other costs (threat assessment and adjudication costs, TSA program and system costs, FBI CHRC costs) will remain the same regardless of the State fees.

In finalizing these TWIC and HME methodologies, TSA considered comments from individual commercial drivers; labor organizations; trucking industry associations; State Departments of Motor Vehicles; longshoremen; mariners; associations representing the agricultural, chemical, explosives, maritime, and petroleum industries; and associations representing State

[12] Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA.

[13] *See* 49 CFR 1572.13. For more background information on the HME program, *see*, HME Program IFR as amended by the TWIC and HME Final Rule.

[14] *See* 6 U.S.C. 469.

[15] 31 U.S.C. 501 *et seq.*

[16] Available at *http://www.whitehouse.gov/omb/circulars_a025.*

[17] *See* 49 CFR 1572.501(b–d).

[18] *See* 49 CFR 1572.405.

[19] *See* 49 CFR 1572.501(c–d).

[20] The preambles to the HME Fees Final Rule and TWIC and HME Final Rule included a discussion of the potential range of fees that would be charged for each Segment of the applicable program. The TWIC and HME Final Rule did not publish specific fees for each Segment of the TWIC program because the contract for enrollment and card production services was not finalized at that time. TSA explained in the preamble that when the contract was executed and final fee amounts determined, it would publish a Notice in the **Federal Register** announcing them. The final fee amounts were published in March 2007. *See* 72 FR 13026 (March 20, 2007).

[21] 70 FR 2542 (Jan. 13, 2005).

governments.[22] TSA does not intend to change the methodologies for determining these fees.

Factors That Could Affect Fees

As explained in the methodology discussion for the TWIC and HME rules, there are certain factors that could cause changes in the fees, such as inflation. Fees could also be affected by cost changes in contractual services for enrollment, adjudication, credentialing and other factors. For example, as explained in the methodologies proposed for TWIC and HME fees,[23] TSA uses contract services to support the TWIC and HME STA programs, including enrollment services, adjudication support, credentialing, technology development, technology operations and maintenance, and customer service support. When the pertinent contracts for services are amended or renegotiated,[24] the fees may be affected. Cost variations, such as changes in the number of enrollments, could also affect fees.

In addition, DHS/TSA is required to review fees no less than every two years.[25] Upon review, if TSA finds that the fees are either too high (that is, total fees exceed the total cost to provide the services) or too low (total fees do not cover the total costs to provide the services) TSA must adjust the fee.

Summary of the Rule

As previously discussed, TSA has a statutory requirement to sustain the HME and TWIC STA programs through user fees. Currently, there is a risk that if the costs for these programs increase in the future, TSA would have to suspend issuance of credentials to meet HME or TWIC program requirements or decrease services until a rule change is completed to reflect any changes in fee amounts. To address this issue, TSA is revising the existing regulations to ensure that TSA can continue to fund these programs on an ongoing basis, provide notice to affected stakeholders of any revisions to the fees, and meet contractual obligations with vendors.

In this final rule, TSA amends 49 CFR 1572.403(a) (State collection of HME fees), 1572.405(a) (TSA collection of HME fees), and 1572.501(b) (collection of TWIC fees) to remove references to specific fee amounts, continue to use the existing fees to support the programs, and publish as a Notice any revisions to fee schedules in the **Federal Register**.

These amendments would make the provisions for HME and TWIC fees consistent with regulations regarding fees for STAs collected under 49 CFR part 1540, subpart C (related to civil aviation security). They would also be consistent with methods for communicating changes for fees required by the FBI[26] and the Federal Emergency Management Agency.[27]

These revisions would not affect FBI fees, as specified in 49 CFR 1572.403(a)(2) (State collection of HME fees), 1572.405(a)(3) (TSA collection of HME fees), and 1572.501(b)(3) (standard TWIC fees). Also, the revisions would not affect the ability of a State to collect any fees that it may impose on an individual who applies to obtain or renew an HME, as specified in current 49 CFR 1572.403(b)(3).

Changes From the Notice of Proposed Rulemaking (NPRM)

This final rule adopts the regulations proposed in the NPRM[28] with no revisions. TSA has reviewed all comments received and, in response to those comments, posted information in the docket regarding the annual review of fees as required by 31 U.S.C. 3512.

Public Comments on the NPRM

The public comment period for the NPRM closed on July 30, 2012. TSA received four public comments regarding this NPRM. Most of the comments received are based on issues regarding the TWIC and HME programs, rather than the issues raised in the NPRM. The proposed rule did not address any TWIC or HME program requirements or processes, it simply proposed eliminating the references to specific fee amounts in the current regulations. Consistent with the proposed rule, the regulations are modified to state that TSA will publish information regarding the fee segments, and any changes in those segments, through a Notice in the **Federal Register** rather than by specifically listing or amending them in the regulations. While most of the comments were unrelated to the scope of the proposed rule, TSA has chosen to address them below.

Comments Regarding Duplicate Fees

Comments: Three commenters raised concern about the duplication of fees that occur when someone has a TWIC and also has a requirement to obtain an HME (or vice versa).

TSA Response: These comments are beyond the scope of this rulemaking. TSA is, however, committed to aligning similar programs, where possible, to reduce the burden to applicants and has worked diligently to align the STAs required for these programs by establishing the same eligibility requirements, offering a standard waivers and appeals process, and leveraging the same fingerprint-based CHRC to reduce redundancy and costs for workers. TSA has determined that the STAs for the HME and TWIC are comparable and made appropriate reductions in fees.

- *Reduced Fee: Applying for a TWIC when HME is valid and unexpired.* Since October 2007 when the TWIC program deployed, an individual who applies for a TWIC and has successfully completed the HME STA is eligible to forego a full, duplicate STA and thus, pay a reduced fee for the TWIC. The fee for the TWIC is reduced from $129.75 to $105.25. The reduced fee covers costs related to other components of the TWIC program, including enrollment and card issuance.
- *Reduced Fee: Applying for an HME STA when TWIC STA is valid and unexpired.* As of February 2012, an individual who applies for the HME STA and has successfully completed the TWIC STA may be eligible to forego a full. duplicate STA and thus, pay a reduced fee. Because HMEs are issued by the States, each State's ability to offer the reduced STA and fee HME depends on its licensing regulations, policies, processes, and systems in the particular State. Some States may not be able to offer comparability to applicants due to various licensing system or process constraints. There are 23 States that offer comparability as of September 2012.

For individuals licensed in the 39 States and the District of Columbia that use the TSA enrollment agent for this program, the current fee for a full HME STA is $86.50. For individuals who have successfully completed the TWIC STA and request a reduced fee, the fee for the HME STA is $67.00. These fees cover the HME STA only, and States may charge additional fees for the HME application process such as testing and license issuance. States that do not use

[22] *See* discussion regarding comments received in the HME Fee Final Rule, at 2545 *et seq.* and the TWIC and HME Final Rule at 2552 *et seq.*

[23] For TWIC, see the TWIC Program NPRM, 71 FR 29396, at 29426 *et seq.* (May 22, 2006), as further clarified by the TWIC and HME Final Rule, at 3506 *et seq.* For HME, see the HME Fees NPRM, as further clarified by the HME Fees Final Rule.

[24] *See, e.g.*, TSA published a request for proposal (RFP) in June 2011 related to TSA enrollment services to support TWIC, HME and other programs (Solicitation Number: HSTS–02–R–11TTC721), and awarded a contract on March 5, 2012.

[25] *See* 31 U.S.C. 3512 (the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 104 Stat. 2838, Nov. 15, 1990)).

[26] *See* 76 FR 78950 (Dec. 20, 2011).

[27] *See* 74 FR 66138 (Dec. 14, 2009).

[28] Published in the **Federal Register** on June 13, 2012 (77 FR 35343).

a TSA enrollment agent for this program have not been able to offer comparability.

Comments Regarding Duplication of Credentials

Comments: Comments suggested that TSA should require one credential across all modes of transportation, such as the TWIC.

TSA Response: This comment is beyond the scope of this rulemaking. However, TSA is aware of this concern among its stakeholders and would like to take this opportunity to respond. TSA is seeking to harmonize STA policies, processes and systems for transportation vetting and credentialing programs in another rulemaking. TSA is required by law to issue a TWIC, a physical credential, to workers on certain maritime vessels and facilities. With respect to other populations in the field of transportation that are subject to TSA vetting, TSA completes the vetting and typically provide the results of the STA to the entity that actually grants the access or privilege. In many cases, these entities issue their own credential, generally after the individual meets additional competency and suitability requirements. Nothing in current statutes or case law would authorize TSA to prevent transportation facilities and entities from applying measures for suitability and access control based on their specific operational needs, business and statutory requirements, and availability of resources.

Comments Regarding Combining Programs

Comments: One commenter suggested that rather than taking the actions proposed in the NPRM, TSA should "focus its resources and energy in developing a single common platform that will allow the agency to develop an "Enroll Once, Use Many" STA system. TSA understands this comment to suggest that TSA develop a single, standardized STA system to allow individuals to provide comprehensive enrollment information once and use the same information across multiple programs.

TSA Response: This comment is beyond the scope of this rulemaking. However, TSA is addressing this concern. TSA has been seeking ways to harmonize vetting programs, where possible, and is pursuing efforts to standardize STA enrollment to meet TSAs objective for an "Enroll Once, Use Many" concept. This concept would allow TSA, after capturing limited information to confirm an individual's identity, and to re-use information already held by DHS to enroll the applicant in another DHS program, if applicable. TSA is currently pursuing information technology modernization efforts to standardize STA systems by building a consolidated vetting and credentialing infrastructure that will provide a "person-centric" view of each individual vetted by TSA and the programs in which they participate.

Comments Regarding Data on Relationship Between Fees and Costs

Comments: TSA received two comments concerning the extent to which the fees generated by the TWIC and HME programs relate to TSA's costs for running these programs, as well as questions regarding the underlying data.

TSA Response: TSA consistently reviews all fees in accordance with Federal guidelines. These reviews indicate that since inception of the TWIC STAs and credentials in 2007, TSA has collected approximately $252 million in fees and provided services costing approximately $237 million. This fiscal position ensures that TSA has recovered sufficient revenue to fully offset current program costs and address future periods where service costs are expected to exceed revenue. Similarly, reviews also indicate that since the inception of HME STAs in 2005, TSA has collected approximately $102 million in fees and provided services costing approximately $97 million. This fiscal position ensures that TSA has recovered sufficient funding to fully offset current program costs and address future periods where service costs may exceed revenue. Future service costs could exceed revenue due to factors such as implementation of renegotiated vendor contracts with increased cost aspects or periods of decreased levels of enrollments where fixed costs cannot be fully recovered.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of the PRA sec. 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. TSA has determined that this final rule does not affect current information collection requirements associated with the affected regulatory provisions.

TSA has two collection requirements relevant to this rulemaking. For TWIC purposes (OMB 1652–0047), TSA collects information needed to process TWIC enrollment and conduct the STA. At the enrollment center, applicants verify their biographic information and provide identity documentation, biometric information, and proof of immigration status (if required). This information allows TSA to complete a comprehensive STA. If TSA determines that the applicant is qualified to receive a TWIC, TSA notifies the applicant that his or her TWIC is ready for activation. Once activated, this credential will be used for identification verification and access control. TSA also conducts a survey to capture worker overall satisfaction with the enrollment process; this optional survey is provided during the activation period. For purposes of the HME (OMB 1652–0027), the collection involves applicant submission of biometric and biographic information for TSA's STA in order to obtain the HME on a CDL issued by the States and the District of Columbia. Both of these collections are currently pending renewal.

Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several types of economic analyses. First, Executive Orders (E.O.s) 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards and, where appropriate to use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Executive Order 12866 Assessment

In conducting these analyses, TSA provides the following conclusions and summary information:

1. TSA has determined that this rulemaking is not a "significant regulatory action" as defined in E.O. 12866;

2. TSA has certified that this rulemaking would not have a significant impact on a substantial number of small entities;

3. TSA has determined that this rulemaking imposes no significant barriers to international trade as defined by the Trade Agreement Act of 1979; and

4. TSA has determined that this rulemaking does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector as defined by the Unfunded Mandates Reform Act (UMRA).

The basis for these conclusions is set forth below.

Costs

This final rule consists of an administrative revision. Therefore, there are no associated industry costs. TSA costs for implementing this rule consist of administrative costs largely covered by current operations and therefore considered de minimis.

Benefits

By statute, TSA must sustain the HME and TWIC STA programs through user fees. The final regulation increases TSA's flexibility to modify fees, as necessary, to ensure that STA enrollment and credentialing fees reflect their associated costs, thus creating a more efficient process. This ability facilitates the continual and ongoing funding of the TWIC and HME programs, allowing TSA to timely meet contractual obligations with vendors, and still provide sufficient notice to affected stakeholders of any revisions to the fees.

Absent the ability to amend fees through Notice rather than rulemaking, TSA is less likely to make timely changes to fees when associated costs change, such as contracts or vendor pricing, and when such changes are made, there is an increased likelihood that they would be more dramatic. Amending fees through Notice allows for more incremental changes, allows for cost-savings to be immediately passed-through to those required to pay the fees, and reduces the risk of TSA suspending issuance of credentials to meet HME or TWIC program requirements or decreasing services until a rule change is completed to reflect the new fee amount.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires agencies to perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities.[29] Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

This final rule is an administrative revision to 49 CFR part 1572 Subpart E ("Fees for Security Threat Assessments for Hazmat Drivers") and Subpart F ("Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC)") and does not impose any additional direct costs on the maritime or hazardous material transportation industries, including costs incurred by small entities. Therefore, TSA certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Small entities impacted by current HME and TWIC fee collection regulations, which this rule revises, include maritime industries associated with ports (*i.e.*, vessels and facilities) regulated under the MTSA. Specifics on impacted entities are provided in the TWIC Implementation in the Maritime Sector Final Rule Regulatory Impact Assessment published December 21, 2006.[30] Using the North American Industry Classification System (NAICS) codes and information from the 2007 Economic Census,[31] TSA identified 11,395 covered entities of which 90 percent (10,206) are considered small based on Small Business Administration (SBA) standards. Truck drivers who transport hazardous materials required to obtain an HME as a supplement to their CDL are also impacted by the current HME and TWIC fee collection regulations.[32] Some transportation companies hauling hazardous materials (in other words, for-hire contractors transporting hazardous materials) may be impacted by the HME requirement. TSA assumes firms engaging in truck transportation of hazmat are generally found in the specialized freight trucking industry (NAICS code 4842). Economic Census 2007 data[33] indicates 39,023 entities operating under NAICS code 4842 of which 99.6 percent (38,868) would be considered small based on SBA size standards (revenues of $25.5 million or less). Therefore, the current HME and TWIC fee collection regulations, which this rule revises, impact a substantial number of small entities. However, as stated previously, this final rule is an administrative change and does not result in any additional direct costs on the maritime or hazmat industry, including costs incurred by small entities in those industries. As such, TSA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires

[29] *See* 5 U.S.C. 603(a).

[30] *See, e.g.*, Deep Sea Freight Transport (NAICS 483111), Deep Sea Passenger Transport (NAICS 483112), Coastal and Great Lakes Freight Transport (NAICS 483113), Coastal and Great Lakes Passenger Transport (NAICS 48314), Inland Water Freight Transport (NAICS 483211), Inland Water Passenger Transport (NAICS 483212), Scenic and Sightseeing Transportation, Water (NAICS 487210), Navigational Services to Shipping (NAICS 488330), Other Support Activities for Water Transportation (NAICS 488390), Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing (NAICS 532411), Sightseeing Water (NAICS 48799), Casinos (except Casino Hotels) (NAICS 713210), Other Gambling Industries (NAICS 713930), Marinas (NAICS 713930), Ports and Harbors (NAICS 488310), Marine Cargo Handling (NAICS 48832), Seafood Product Preparation and Packaging (NAICS 3117), Ship Building and Repair (NAICS 336611), Boat Building (NAICS 336612).

[31] U.S. Census Bureau, Business & Industry, 2007 Economic Census. Relevant NAICS codes include 48311, 48321, 487210, 488310, 488320, 488330, 488390, 48799, 532411, 713210, 713930, 713930, 3117, 336611, 336612. TSA assumes all entities in NAICS 3117, 336611 and 336612 are small based on available data limitations. NAICS 31–33 available at *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_31SG1&prodType=table*. NAICS 48-49 available at *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_48SSSZ4&prodType=table*. NAICS 53 available at *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_53SSSZ4&prodType=table*. NAICS 71 available at *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_71SSSZ4&prodType=table*.

[32] *See* 49 CFR 1572.403 and 1573.405.

[33] U.S. Census Bureau, Business & Industry, 2007 Economic Census; Sector 48: Transportation and Warehousing: Subject Series—Estab & Firm Size: Summary Statistics by Revenue Size of Firms for the United States: 200. To access NAICS 4842, scroll to entries 501–600 of 2,238. Available at *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_48SSSZ4&prodType=table*.

consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and as TSA has determined that there are no associated industry costs, it does not impose significant barriers to international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of E.O. 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact Analysis

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1572

Appeals, Commercial Driver's License, Criminal history record checks, Explosives, Facilities, Hazardous materials, Maritime security, Merchant mariners, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

The Amendments

For the reasons set forth in the preamble, the Transportation Security Administration amends part 1572 of Chapter XII of Title 49, Code of Federal Regulations, as follows:

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

■ 1. The authority citation for part 1572 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

Subpart E—Fees for Security Threat Assessments for Hazmat Drivers

■ 2. In § 1572.403, revise paragraph (a) to read as follows:

§ 1572.403 Procedures for collection by States.

* * * * *

(a) *Imposition of fees.* (1) An individual who applies to obtain or renew an HME, or the individuals' employer, must remit to the State the Threat Assessment Fee and the FBI Fee, in a form and manner approved by TSA and the State, when the individual submits the application for the HME to the State.

(2) TSA shall publish the Threat Assessment Fee described in this subpart for an individual who applies to obtain or renew and HME as a Notice in the **Federal Register.** TSA reviews the amount of the fees periodically, at least once every two years, to determine the current cost of conducting security threat assessments. Fee amounts and any necessary revisions to the fee amounts shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other applicable Federal law.

(3) The FBI Fee required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572 is determined by the FBI under Public Law 101–515. If the FBI amends this fee, the individual must remit the amended fee.

* * * * *

■ 3. In § 1572.405, revise paragraph (a) to read as follows:

§ 1572.405 Procedures for collection by TSA.

* * * * *

(a) *Imposition of fees.* (1) An individual who applies to obtain or renew an HME, or the individuals' employer, must remit to the TSA agent the Information Collection Fee, Threat Assessment Fee, and FBI Fee, in a form and manner approved by TSA, when the individual submits the application required under 49 CFR part 1572.

(2) TSA shall publish the Information Collection Fee and Threat Assessment Fee described in this subpart for an individual who applies to obtain or renew an HME as a Notice in the **Federal Register.** TSA reviews the amount of the fees periodically, at least once every two years, to determine the current cost of conducting security threat assessments. Fee amounts and any necessary revisions to the fee amounts shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other applicable Federal law.

(3) The FBI Fee required for the FBI to process fingerprint identification records and name checks required under 49 CFR part 1572 is determined by the FBI under Public Law 101–515. If the FBI amends this fee, TSA or its agent, will collect the amended fee.

* * * * *

Subpart F—Fees for Security Threat Assessments for Transportation Worker Identification Credential (TWIC)

■ 3. Amend § 1572.501 by revising paragraphs (b), (c)(1) and (2), (d), and (g) to read as follows:

§ 1572.501 Fee collection.

* * * * *

(b) *Standard TWIC Fees.* The fee to obtain or renew a TWIC, except as provided in paragraphs (c) and (d) of this section, includes the following segments:

(1) The Enrollment Segment Fee covers the costs for TSA or its agent to enroll applicants.

(2) The Full Card Production/Security Threat Assessment Segment Fee covers the costs for TSA or its agent to conduct a security threat assessment and produce the TWIC.

(3) The FBI Segment Fee covers the costs for the FBI to process fingerprint identification records, and is the amount collected by the FBI under Pub. L. 101–515. If the FBI amends this fee, TSA or its agent will collect the amended fee.

(c) * * *

(1) The Enrollment Segment Fee covers the costs for TSA or its agent to enroll applicants.

(2) The Reduced Card Production/Security Threat Assessment Segment covers the costs for TSA to conduct a portion of the security threat assessment and issue a TWIC.

(d) *Card Replacement Fee.* The Card Replacement Fee covers the costs for TSA to replace a TWIC when a TWIC holder reports that his/her TWIC has been lost, stolen, or damaged.

* * * * *

(g) *Imposition of fees.* TSA routinely establishes and collects fees to conduct the security threat assessment and credentialing process. These fees apply to all entities requesting a security threat assessment and/or credential. The fees described in this section for an individual who applies to obtain, renew, or replace a TWIC under 49 CFR part 1572, shall be published as a Notice in the **Federal Register.** TSA reviews the amount of these fees periodically, at least once every two years, to determine the current cost of conducting security threat assessments. Fee amounts and any necessary revisions to the fee amounts shall be determined by current costs, using a method of analysis consistent with widely-accepted accounting principles and practices, and calculated in accordance with the provisions of 31 U.S.C. 9701 and other applicable Federal law.

Issued in Arlington, Virginia, on April 18, 2013.

John S. Pistole,

Administrator.

[FR Doc. 2013–09732 Filed 4–24–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120424023–1023–01]

RIN 0648–XC631

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #1 and #2

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

ACTION: Modification of fishing seasons and landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces two inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial fisheries in the area from Cape Falcon, Oregon to Point Arena, California.

DATES: The effective dates for the inseason action are set out in this document under the heading Inseason Actions. Inseason actions remain in effect until modified by additional inseason action or superseded by the 2013 annual management measures on May 1, 2013. Comments will be accepted through May 10, 2013.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0079, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0079*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA, 98115–6349.
- *Fax:* 206–526–6736, Attn: Peggy Mundy.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2012 annual management measures for ocean salmon fisheries (77 FR 25915, May 2, 2012), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada Border to the U.S./Mexico Border, beginning May 1, 2012, and 2013 salmon seasons opening earlier than May 1, 2013.

NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Prior to taking inseason action, the Regional Administrator (RA) consults with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)(1)). Management of the salmon fisheries is generally divided into two geographic areas: North of Cape Falcon (U.S./Canada Border to Cape Falcon, Oregon) and south of Cape Falcon (Cape Falcon, Oregon to the U.S./Mexico Border). The inseason actions in this document all apply south of Cape Falcon.

Inseason Actions

Inseason Action #1

The RA consulted with representatives of the Council, California Department of Fish and Wildlife (CDFW), and Oregon Department of Fish and Wildlife (ODFW) on March 9, 2013. The information considered during this consultation related to projected abundance of Chinook salmon stocks for the 2013 salmon fishing season.

Inseason action #1 adjusted the scheduled opening date for the commercial salmon fisheries from Cape Falcon, Oregon to Humbug Mountain, Oregon (Newport/Tillamook and Coos Bay subareas) and from Humbug Mountain, Oregon to the Oregon/California Border (Oregon Klamath Management Zone). These fisheries opened on April 1, 2013 rather than March 15, 2013, as previously scheduled in the 2012 management measures. This action was taken to conserve impacts on age-4 Klamath River fall Chinook salmon (KRFC). On March 9, 2013, the states recommended this action and the RA concurred; inseason action #1 took effect on March 15, 2013. This inseason action remains in effect until superseded by inseason action or implementation of 2013 annual management measures which will be effective on May 1, 2013. This inseason action is authorized by 50 CFR 660.409(b)(1).

Inseason Action #2

The RA consulted with representatives of the Council, ODFW, and CDFW on March 9, 2013. The information considered during this consultation related to projected abundance of Chinook salmon stocks for the 2013 salmon fishing season.

Inseason action #2 cancelled the opening scheduled in the commercial fishery from Horse Mountain, California

to Point Arena, California (Fort Bragg subarea), originally scheduled for April 16, 2013. This action was taken to conserve impacts on age-4 KRFC. On March 9, 2013, the states recommended this action and the RA concurred; inseason action #2 took effect on March 15, 2013. This inseason action remains in effect until superseded by inseason action or implementation of 2013 annual management measures which will be effective on May 1, 2013. This inseason action is authorized by 50 CFR 660.409(b)(1).

All other restrictions and regulations remain in effect as announced for the 2012 Ocean Salmon Fisheries and 2012 fisheries opening prior to May 1, 2013 (77 FR 25915, May 2, 2012).

The RA determined that the best available information indicated that the stock abundance, and catch and effort projections supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (77 FR 25915, May 2, 2012), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the stock abundance projections were developed and fisheries impacts calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, thus allowing fishers access to the available fish at the time the fish were available while ensuring that quotas are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon Fishery Management Plan and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: April 19, 2013.

Kara Meckley,

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

[FR Doc. 2013–09808 Filed 4–24–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XC638

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2013 Greenland turbot initial total allowable catch (ITAC) in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 Greenland turbot ITAC in the Bering Sea subarea of the BSAI is 1,369 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2013 Greenland turbot ITAC in the Bering Sea subarea of the BSAI will be needed as incidental catch to support other groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside the remaining 1,369 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Greenland turbot in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 19, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 22, 2013.

James P. Burgess,

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

[FR Doc. 2013–09820 Filed 4–24–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XC369

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2013 Greenland turbot initial total allowable catch (ITAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI is 383 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2013 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI will be needed as incidental catch to support other groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside the remaining 383 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 19, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 22, 2013.

James P. Burgess,

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

[FR Doc. 2013–09810 Filed 4–24–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 80
Thursday, April 25, 2013

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0442; Directorate Identifier 2007–SW–24–AD]

RIN 2120–AA64

Airworthiness Directives; Various Sikorsky-Manufactured Transport and Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: We are revising the proposals in an earlier notice of proposed rulemaking (NPRM) for certain Sikorsky Aircraft Corporation (Sikorsky) Model S–61A, D, E, L, N, NM (serial number 61454), R, and V; Croman Corporation Model SH–3H, Carson Helicopters, Inc., Model S–61L; Glacier Helicopters, Inc. Model CH–3E; Robinson Air Crane, Inc. Model CH–3E, CH–3C, HH–3C, and HH–3E; and Siller Helicopters Model CH–3E and SH–3A helicopters. The NPRM proposed superseding an existing AD but retaining some requirements of that AD, removing certain dowel pin bores, expanding the applicability to include additional helicopters, and implementing a new retirement life for each main rotor shaft (MRS) based on a reevaluation of the MRS service life. This SNPRM is prompted by the comments received in response to the NPRM and a reevaluation of the relevant data. The proposed actions are intended to prevent MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this SNPRM by June 24, 2013.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the 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 Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, email address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7161, fax (781) 238–7170, email *jeffrey.lee@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

On April 10, 2008, we issued an NPRM (73 FR 21556, April 22, 2008) proposing to amend 14 CFR part 39 to include an AD for Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V; Croman Corporation Model SH–3H, Carson Helicopters, Inc. Model S–61L; Glacier Helicopters, Inc. Model CH–3E; Robinson Air Crane, Inc. Model CH–3E, CH–3C, HH–3C and HH–3E; and Siller Helicopters Model CH–3E and SH–3A helicopters. That NPRM proposed superseding AD 98–26–02, published in the **Federal Register** on December 16, 1998 (63 FR 69177), that only applied to the affected Sikorsky model helicopters. That NPRM proposed retaining some of the requirements of the existing AD but also proposed determining a new retirement life for each MRS, removing from service any MRS with oversized dowel pin bores, and expanding the applicability to include certain restricted category models that were inadvertently omitted in the current AD. That NPRM was prompted by the manufacturer's reevaluation of the retirement life for the MRS based on torque, ground-air-ground (GAG) cycle, and fatigue testing. Those proposals were intended to prevent MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM (73 FR 21556, April 22, 2008), we have determined a need to revise the proposed requirements, based on our review of the data and the comments

received. These supplemental proposals are intended to extend the hours time-in-service (TIS) required for identifying the MRS as a repetitive external lift (REL) MRS to coincide with the nondestructive inspection (NDI) so that only one disassembly of the shaft is required, which would reduce the down time required to disassemble the shaft. Also, this action proposes to extend the time required to replace the MRS.

This action also proposes to modify a paragraph in the AD that imposes a factor of 30 for unknown flight time. This has been changed to a factor of 13.6. This action proposes to add the determination of the shaft cycle count for the purpose of establishing the life limit. Also, this action proposes to allow additional Revision A service information that can be used to modify an REL MRS for its life limit determination.

We are reopening the comment period to allow the public to comment on these proposed changes.

Comments

We gave the public the opportunity to comment on the previous NPRM (73 FR 21556, April 22, 2008). The following presents the comments received on the NPRM, and the FAA's response to those comments.

Request

One commenter stated there was a difference between AD 98–26–02 and the NPRM in how many lifts constitute the shaft being REL. The commenter stated that a shaft that had 6 lifts per hour is REL under AD 98–26–02 but would not be considered REL (more than 6 lift cycles per hour) under the NPRM.

We agree. The proposed AD is changed to match AD 98–26–02. Those shafts that have 6 or more lifts per hour are REL shafts.

Two commenters commented on the requirement to identify the REL MRS. One commenter stated that the compliance time to identify the REL MRS should be extended from 5 hours to 10 hours. Another commenter asked if the identification of REL MRS on the component history card would be sufficient and stated that the marking requirement of the REL MRS would require an extended down time and lost revenue.

We partially agree. We still believe the physical REL MRS should be identified and marking the component history card alone is insufficient. However, to avoid unnecessary down time, we are proposing to mark the MRS to coincide with the NDI at 1,100 hours TIS, at which time, the shaft would be disassembled anyway thus avoiding unnecessarily disassembling the MRS just to mark it.

One commenter stated that mentioning the identification of the TS–281 marking in the proposed "Note 2" could result in a serviceable MRS being rejected. The commenter further states that an MRS can have the TS–281 marking but not have oversized dowel pin holes.

We disagree. The proposed AD would not require all shafts marked with the TS–281 marking to be removed from service. Only those shafts that have oversized dowel pin bores would be required to be removed from service.

A commenter stated that compliance time (grace period) should be extended for the MRS over life limit because the steel plates referenced in the service information may not be available. Another commenter, the manufacturer, further stated that cycle limits should be added to the grace period.

We disagree. Providing a grace period within which to comply with a retirement life essentially extends the retirement life and would not be appropriate. Also, this AD does not mandate modifying the configuration using the steel plates in SB 61B35–53A, and therefore the availability of that part does not factor into the compliance times identified.

Another commenter stated that the lack of documented failures supports keeping the existing life limits in place and does not support the additional cycle limits to the MRS due to flawed testing. The commenter further stated that there have been no reported cracks in the MRS in the 9+ years since issuing AD 98–26–02. The commenter also stated that the life limits were generated using a flawed test program: Based on an approved Rotorcraft Flight Manual, the chart shows that at above 20 degrees Celsius and 1000-foot pressure altitude, the helicopter cannot produce 103 per cent torque. The capability of the helicopter reaching 103 percent torque was one of the reasons the commenter gave that the testing was flawed. Due to that capability, the testing at the 96 percent torque value was indicated to be more realistic (the test specimen lasted for longer than 1.4 million cycles). The second example of flawed testing given by the commenter was that using the 200,000 cycle in the presentation and without using the mean or working curve, the factor of 30 gives an equivalent time of over 6,660 flight hours. This would allow several 1000-hour inspections based on the overhaul manual to remove any of the fretting damage. Therefore, the fretting damage would have been repaired, resulting in a significant increase in cycles to failure.

We partially agree. During certain operations, the helicopter can reach 103 percent torque depending on the temperature and altitude adjustments. The ability of the helicopter to reach 103 percent torque was one of the reasons given for flawed testing. Based on logging surveys conducted by Sikorsky, the current usage spectrum of some operators exceeds those that generated the MRS life limits. However, there have been no new reported cracks. During the time histories of engine torque available during an operator logging survey, the 103 per cent engine torque was seen during those operations. Because the torque value can be reached during logging operations, it is a realistic torque value for determining the new life limit.

The second example provided of flawed testing is based on inspecting the specimen by following the overhaul manual and repairing any damage. However, when performing fatigue tests for life limit certification of the helicopter, these tests are carried out for the life of the part without any stoppage for inspections or repairs. The allowable cycles are further reduced due to the limited number of test specimens to represent the manufacturing variability and other unknown factors. Therefore, those cycles are modified using a reduction factor to determine a life limit. Since the testing to determine life limits does not consider repairs, the testing performed was not flawed. Therefore, we are proposing to retain the new life limits.

The same commenter stated that the lack of documented failures supports keeping the existing life limits in place and does not support the additional cycle limits to the MRS because the 30,000 cycle limit would reduce the actual flight hour time to as low as 1,000 hours (using imposed 30 cycles per flight hour factor). The commenter further stated that the significant decrease in life limit from 2,200 hours to 1,000 hours is not justified.

We partially agree. Providing the factor of 30 to the unknown flight time to determine the component lift cycle count would reduce the existing life limit to below those of AD 98–26–02. Therefore, we are modifying the requirements by imposing a factor of 13.6 for the lift cycle count to the unknown flight time.

The manufacturer stated that we should require incorporating Customer Service Notice (CSN) 6135–10A and Alert Service Bulletin (ASB) 61B35–53A for unmodified REL MRS and reference these instead of the prior revisions. The

commenter further stated that we should require replacing the planetary assembly and MRS assembly attaching hardware with the high strength steel hardware for unmodified REL MRS because the titanium planetary plates have a history of cracks in REL operations.

We partially agree. The titanium plates continue to be airworthy so long as the compliance times for the unmodified REL MRS times are followed. Because they are still airworthy parts, incorporating CSN 6135–10A and ASB 61B35–53A, both dated April 29, 2004, will not be required for unmodified REL MRS. Operators continuing to use the unmodified REL MRS will continue to have a lower life limit as identified in AD 98–26–02 for the unmodified REL MRS in comparison to the life of a modified REL MRS. However, the later versions of the CSN and ASB (Revision A) will not be incorporated because that is unnecessary to correct the unsafe condition. The previous versions are equivalent to CSN 6135–10A and ASB 61B35–53A for determining a modified REL MRS configuration. Therefore, for modified REL MRS, we propose adding CSN 6135–10A and ASB 61B35–53A to provide credit for those modified by following the original ASB and CSN or revision A to those documents.

The manufacturer also stated that the compliance time (grace period) for the non-REL MRS should be reduced to 150 from 1500 hours TIS.

We disagree. Sikorsky issued ASB 61B35–69, which specified replacing a non-REL MRS at the next main gearbox overhaul or within 6 months. However, as these shafts have exceeded the life limit for the part, it should be replaced with an airworthy part. Therefore, we are proposing to remove the grace period.

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other helicopters of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed AD Requirements

This proposed AD would retain some of the requirements from the current AD 98–26–02 (63 FR 69177, December 16, 1998): Recording the number of external lift cycles, determining whether the shaft is REL or non-REL, marking the REL shafts at the time of the NDI, and conducting an NDI for shafts used in REL operations and replacing it if a crack is found.

The proposed AD would also require calculating a 250-hour TIS moving average of lift cycles to determine whether the MRS is an REL MRS, determine a new retirement life for each MRS based on hour TIS and lift cycles, remove from service any MRS with oversized dowel pin bores, and expand the applicability to include certain restricted category models that were inadvertently omitted in the existing AD. Also, this proposed action would extend the retirement life of modified REL MRS from 2,200 hours TIS to 5,000 hours TIS but also implement lift-cycle retirement lives. Lastly, this action proposes allowing the use of Revision A service information to modify the REL MRS for life limit determination.

Costs of Compliance

We estimate that this proposed AD would affect 60 helicopters of U.S. registry. We estimate that operators may incur the following costs in order to comply with this proposed AD: It would take about 2.2 work hours to NDI an REL MRS at $85 per work hour plus a $50 consumable cost, for a total cost of $237 per helicopter and $14,220 for the U.S. fleet. It would take 2.2 work hours at $85 per work hour to replace an MRS, and parts would cost $44,753, for a total cost of $44,940 per helicopter.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on 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 removing Amendment 39–10943 (63 FR 69177, December 16, 1998), and by adding the following new airworthiness directive (AD):

Sikorsky Aircraft Corporation; Croman Corporation; Carson Helicopters, Inc.; Glacier Helicopters, Inc.; Robinson Air Crane, Inc.; and Siller Helicopters: Docket No. FAA–2008–0442; Directorate Identifier 2007–SW–24–AD.

(a) Applicability

This AD applies to Model S–61A, D, E, L, N, NM (serial number (S/N) 61454), R, V, CH–3C, CH–3E, HH–3C, HH–3E, SH–3A, and SH–3H helicopters with main rotor shaft (MRS), part number (P/N) S6135–20640–001, S6135–20640–002, or S6137–23040–001, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 98–26–02 (63 FR 69177, December 16, 1998), Amendment 39–10943, Docket No. 96–SW–29–AD.

(d) Comments Due Date

We must receive comments by June 24, 2013.

(e) 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.

(f) Required Actions

(1) Within 10 hours time-in-service (TIS):

(i) Create a component history card or equivalent record for each MRS.

(ii) If there is no record of the hours TIS on an individual MRS, substitute the helicopter's hours TIS.

(iii) If the record of lift cycles on an individual MRS is incomplete, add the known number of lift cycles to a number calculated by multiplying the number of hours TIS of the individual MRS by the average lift cycles calculated according to the instructions in Section I of Appendix I of this AD or by a factor of 13.6, whichever is higher.

(iv) At the end of each day's operations, record the number of external lift cycles (lift cycles) performed and the hours TIS. An external lift cycle is defined as a flight cycle in which an external load is picked up, the helicopter is repositioned (through flight or hover), and the helicopter hovers and releases the load and departs or lands and departs.

(2) Within 250 hours TIS, determine whether the MRS is a repetitive external lift (REL) or non-REL MRS.

(i) Calculate the first moving average of lift cycles by following the instructions in Section I of Appendix I of this AD.

(A) If the calculation results in 6 or more lift cycles per hour TIS, the MRS is an REL-MRS.

(B) If the calculation results in less than 6 lift cycles per hour TIS, the MRS is a Non-REL MRS.

(ii) If the MRS is a Non-REL MRS based on the calculation performed in accordance with paragraph (e)(2)(i), thereafter at intervals of 50 hour TIS, recalculate the average lift cycles per hour TIS by following the instructions in Section II of Appendix 1 of this AD.

(iii) Once an MRS is determined to be an REL MRS, you no longer need to perform the 250-hour TIS moving average calculation, but you must continue to count and record the lift cycles and number of hours TIS.

(iv) If an MRS is determined to be an REL MRS, it remains an REL MRS for the rest of its service life and is subject to the retirement times for an REL MRS.

(3) Within 1,100 hours TIS:

(i) Conduct a Non-Destructive Inspection for a crack on each MRS. If there is a crack in an MRS, before further flight, replace it with an airworthy MRS.

(ii) If an MRS is determined to be an REL MRS, identify it as an REL MRS by etching "REL" on the outside diameter of the MRS near the part S/N by following the Accomplishment Instructions, paragraph 3.C., of Sikorsky Alert Service Bulletin (ASB) 61B35–69, dated April 19, 2004.

(4) Replace each MRS with an airworthy MRS on or before reaching the revised retirement life as follows:

(i) For an REL MRS that is not modified by following Sikorsky Customer Service Notice (CSN) 6135–10, dated March 18, 1987, and ASB No. 61B35–53, dated December 2, 1981 (unmodified REL MRS), the retirement life is 30,000 lift cycles or 1,500 hours TIS, whichever occurs first.

(ii) For an REL MRS that is modified by following Sikorsky CSN 6135–10, dated March 18, 1987, and Sikorsky ASB No. 61B35–53 dated December 2, 1981, or CSN 6135–10A, Revision A, and ASB 61B35–53A, Revision A, both dated April 19, 2004 (modified REL MRS), the retirement life is 30,000 lift cycles or 5,000 hours TIS, whichever occurs first.

(iii) For a non-REL MRS, the retirement life is 13,000 hours TIS.

(5) Establish or revise the retirement lives of the MRS as indicated in paragraphs (e)(4)(i) through (e)(4)(iii) of this AD by recording the new or revised retirement life on the MRS component history card or equivalent record.

(6) Within 50 hours TIS, remove from service any MRS with oversized (0.8860" or greater diameter) dowel pin bores.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to Jeffrey Lee, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7161, fax (781) 238–7170, email *jeffrey.lee@faa.gov*.

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

(h) Additional Information

(1) Sikorsky Aircraft Corporation issued an All Operators Letter (AOL) CCS–61–AOL–04–0005, dated May 18, 2004, with an example and additional information about tracking cycles and the moving average procedure. This AOL is not incorporated by reference but contains additional information about the subject of this AD.

(2) The Overhaul and Repair Instruction (ORI) Number 6135–281, Part B, Step 5, and ORI 6137–041, Section III, Oversize Dowel Pin Bore Repair and identified on the flange as TS–281 or TS–041–3, which is not incorporated by reference, contains additional information about the subject of this AD.

(3) For more information about the AOL or the ORI, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, email address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

APPENDIX I

Section I: The First Moving Average of Lift Cycles per Hour TIS

The first moving average calculation is performed on the MRS assembly when the external lift component history card record reflects that the MRS assembly has reached its first 250 hours TIS. To perform the calculation, divide the total number of lift cycles performed during the first 250 hours TIS by 250. The result will be the first moving average calculation of lift cycles per hour TIS.

Section II: Subsequent Moving Average of Lift Cycles per Hour TIS

Subsequent moving average calculations are performed on the MRS assembly at intervals of 50 hour TIS after the first moving average calculation. Subtract the total number of lift cycles performed during the first 50-hour TIS interval used in the previous moving average calculation from the total number of lift cycles performed on the MRS assembly during the previous 300 hours TIS. Divide this result by 250. The result will be the next or subsequent moving average calculation of lift cycles per hour TIS.

Section III: Sample Calculation for Subsequent 50 Hour TIS Intervals

Assume the total number of lift cycles for the first 50 hour TIS interval used in the previous moving average calculation = 450 lift cycles and the total number of lift cycles for the previous 300 hours TIS = 2700 lift cycles. The subsequent moving average of lift cycles per hour TIS = (2700–450) divided by 250 = 9 lift cycles per hour TIS.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

Issued in Fort Worth, Texas, on April 16, 2013.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–09767 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0350; Directorate Identifier 2012–SW–050–AD]

RIN 2120–AA64

Airworthiness Directives; AgustaWestland S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for AgustaWestland S.p.A. (AgustaWestland) Model A119 and AW119 MKII helicopters to require inspecting the pilot and co-pilot doors to ensure that the windows are properly bonded within the doors. If the windows are not properly bonded, the proposed AD would require applying bonding to the windows, the seals, and the window frames of the pilot and co-pilot doors. This proposed AD is prompted by the loss of a pilot-door window during a test flight. The proposed actions are intended to ensure the windows do not detach from the doors, potentially injuring persons on the ground and damaging the helicopter's tailboom and the tail rotor blades.

DATES: We must receive comments on this proposed AD by June 24, 2013.

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 AgustaWestland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@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 EASA AD No. 2012–0058, dated April 3, 2012, to correct an unsafe condition for AgustaWestland Model A119 and AW119 MKII helicopters. EASA advises that the pilot-door window detached during a test flight of an AW119 MKII helicopter. The occupant was not injured, and the helicopter was not damaged.

According to EASA, an investigation revealed that a "lack of the bonding of the seal both to the window and to the door structure" caused the window's detachment. To address this unsafe condition, AugustaWestland issued Bollettino Tecnico (BT) No. 119–47, dated March 29, 2012, and EASA issued AD No. 2012–0058 to require an inspection of the bonding in the pilot and co-pilot door windows and, if there is no bonding, applying bonding.

If this condition is not corrected, it could lead to detachment of the windows from the pilot- and co-pilot doors, potentially injuring persons on the ground and damaging the helicopter.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

We reviewed BT No. 119–47 for all AgustaWestland A119 and AW119 MKII helicopters, which contains procedures to ensure that the pilot- and co-pilot door windows are correctly bonded.

Proposed AD Requirements

This proposed AD would require, within the next 50 hours time-in-service (TIS) or within the next five months, whichever comes first, inspecting the pilot and co-pilot doors to determine whether there is bonding between the seals, the window frames, and the windows in the external and internal sides of the seals' junction areas. If no bonding exists, before further flight, this proposed AD would require applying bonding to the windows, seals, and window frames.

Costs of Compliance

We estimate that this proposed AD would affect 65 helicopters of U.S. Registry and that labor costs would average $85 an hour. Based on these estimates, we expect the following costs:

- Inspecting for bonding between the seals and the windows in the internal

and external sides of the junction areas would require 0.5 work-hour for a labor cost of about $43. No parts would be needed, so the cost for the U.S. fleet would total $2,795.

• Adding the bonding material if needed would require about 1.5 work-hours for a labor cost of about $128. The cost of materials would be negligible.

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):

AGUSTAWESTLAND S.p.A.: Docket No. FAA–2013–0350; Directorate Identifier 2012–SW–050–AD.

(a) Applicability

This AD applies to AgustaWestland S.p.A. (AgustaWestland) Model A119 and AW119 MKII helicopters, serial numbers up to and including 14781, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a window detaching from the pilot or co-pilot doors, which could result in damage to the helicopter and injury to persons on the ground.

(c) Reserved

(d) Compliance

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

(e) Required Actions

Within the next 50 hours time-in-service (TIS) or within the next five months, whichever comes first:

(1) Visually inspect the pilot and co-pilot doors by referencing Figure 1 of Bollettino Tecnico No. 119–47, dated March 29, 2012 (BT), to determine whether there is bonding between the seal (3) and the window (4) in the internal and external side of the seal's junction area.

(2) If there is no bonding, before further flight, apply bonding to the windows, seals, and window frames in accordance with the Compliance Instructions, paragraphs 5 through 20, of the BT.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov*.

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency AD No. 2012–0058, dated April 3, 2012.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5610, Flight Compartment Windows.

Issued in Fort Worth, Texas, on April 12, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–09715 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0379; Directorate Identifier 2009–SW–26–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. (Bell) Model Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing revised airworthiness directive (AD) for all Bell Model 204B and certain serial-numbered Model 205A–1 helicopters with a certain tail rotor pitch control chain (chain) installed. The existing AD requires visually inspecting the chain to detect a crack in the link segments and, for affected Model 205A–1 helicopters, replacing the tail rotor chain and cable control system with a push-pull control system. Since we issued that AD, we have determined the need to apply the requirements to a newly-produced, similarly-designed chain with a different part number. Also, for the Model 204B, data shows the need to reduce the inspection interval of the chain and revise its inspection procedures because the rapid growth of a crack can lead to premature chain failure and to install a tail rotor cable and chain damper kit (damper kit) to reduce the oscillatory loading. We have also determined that installing a push-pull control system should apply to Model 205A–1 helicopters with

certain serial numbers, regardless of the chain part number installed. These proposed actions are intended to prevent failure of the chain, loss of tail rotor blade pitch control, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by June 24, 2013.

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 Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*. 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: Michael Kohner, ASW–170, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783, email *mike.kohner@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

On June 3, 1976, we issued AD 76–12–07, Amendment 39–2640 (41 FR 23939, June 14, 1976), Docket No. 76–SW–19. That AD required repetitive inspections, at intervals not to exceed 25 hours time-in-service (TIS), for a chain, part number (P/N) 204–001–739–003, installed on Bell Model 204B and 205A–1 helicopters. This AD also required, before further flight, replacing chains with cracked or broken links or segments.

On September 12, 1979, we revised AD 76–12–07 by issuing Amendment 39–3569 (44 FR 55555, September 27, 1979). That amendment limits the applicability for the Model 205A–1 helicopter to those with a serial number (S/N) of 30001 through 30228; decreases the inspection interval of the chain from 25 hours TIS to 10 hours TIS; and requires replacing the existing chain and cable control system with a push-pull control system.

Both amendments were prompted by several chain failures occurring in flight and reports of cracked chain links on Model 205A–1 helicopters. Those actions are intended to detect cracks in the chain link segments to prevent failure of a chain and subsequent loss of directional control of the helicopter.

Actions Since Existing ADs Were Issued

Since we issued the original (June 3, 1976) and revised (September 12, 1979) versions of AD 76–12–07, we have approved a very-similarly designed chain, P/N 204–001–739–105, eligible for installation on Model 204B helicopters. Testing by the manufacturer has shown that the fatigue characteristics for the two chains are almost identical, and the requirements of AD 76–12–07 should apply to this additional part-numbered chain. Also, we have determined that this crack can grow quickly, and thus the recurring inspection interval for the Model 204B should be reduced from 25 hours TIS to 10 hours TIS and should include procedures to slowly operate the cockpit anti-torque control pedals during the inspection. This is so that the entire surface area of the chain in contact with the control quill sprocket (sprocket), including that portion underneath the sprocket, can be inspected. Testing has also shown a reduction in the oscillatory loading of the chain when a damper kit is installed. To complement these requirements, we have determined for the Model 204B that we should revise the Airworthiness Limitations section of the maintenance manual, or the Instructions for Continued Airworthiness (ICAs), to include the 10 hours TIS recurring inspection.

We have also determined that the requirement in AD 76–12–07 for the Model 205A–1 to replace the tail rotor chain and cable control system with a push-pull control system should apply regardless of chain part number installed. This would be required before further flight to ensure that any part-numbered chain cannot be installed on a Model 205A–1 helicopter, which should already have a push-pull control system installed in accordance with the requirement in AD 76–12–07. The actions in this proposed AD are intended to prevent failure of the chain, loss of tail rotor blade pitch control, and subsequent loss of control of the helicopter.

FAA's Determination

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

Related Service Information

The FAA has reviewed Bell Alert Service Bulletin (ASB) No. 204–75–4, dated December 16, 1975, for the Model 204B helicopter, which specifies to visually inspect the chain using a 10-power magnifying glass every 10 flight hours. The inspection intervals for a chain were reduced because of several field reports of cracked and broken links. We have also reviewed Bell ASB 204–79–7, dated August 21, 1979.

which specifies the installation of a damper kit. A field evaluation has shown considerable improvement in the reliability of the chain when a damper kit is installed.

Further, we have reviewed Bell ASB No. 205–78–5, dated May 16, 1978, for Model 205A–1 helicopters, serial number 30001 through 30228, which specifies removing the tail rotor chain and cable control system and installing a push-pull control system kit, P/N 205–704–057–001 or 205–704–057–101. The tail rotor push-pull control system is installed in accordance with Service Instructions (SI) No. 205–38, "changed" March 28, 1990, for an improved tail rotor hub and blade assembly kit, P/N 205–704–040–001 and 205–704–040–003, and SI No. 205–46, revised March 7, 1980, for installing a push/pull anti-torque retrofit kit.

Proposed AD Requirements

The proposed AD would require:

- For Bell Model 205A–1 helicopters, S/N 30001 through 30228, before further flight, replacing the tail rotor chain and cable control system with an airworthy tail rotor push-pull control system by installing an improved tail rotor hub and blade assembly kit, P/N 205–704–040–001 or 205–704–040–003, and then installing a push/pull anti-torque retrofit kit, P/N 205–704–057–001 or 205–704–057–101.
- For Bell Model 204B helicopters, visually inspecting chains, P/N 204–001–739–003 and –105, at 10-hour TIS intervals using a 10-power or higher magnifying glass and a light; revising the inspection procedures; installing a damper kit; and revising the maintenance manual or ICAs to include the inspection intervals.

Costs of Compliance

We estimate that this proposed AD would affect 13 Model 204B and 52 Model 205A–1 helicopters of U.S. registry and that operators may incur the following costs:

- Visual inspection of the link segments in a chain on a Model 204B helicopter will require .25 work hour for each inspection, 60 per year, at an average labor rate of $85 per work hour for a cost per helicopter of $1,275 and fleet cost of $16,575;
- Replacement of a chain having a cracked or broken link or segment on a Model 204B helicopter would require .5 work hour and a parts cost of $4,922, for a cost per helicopter of $4,965 and a total cost of $9,930 (assuming 2 would be replaced);
- Installation of a damper kit on a Model 204B helicopter would require 3 work hours and a parts cost of $14,925, for a cost per helicopter of $15,180 and a total cost of $30,360 (assuming 2 would be installed); and
- Installation of a tail rotor push-pull control system on an affected Model 205A–1 helicopter would require 225 work hours and a parts cost of $152,214, for a cost per helicopter of $171,339.

Therefore, we estimate the total cost impact of the proposed AD on U.S. operators to be $228,204.

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, pursuant to 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 removing Amendment 39–3569 (44 FR 55555, September 27, 1979), which amended Amendment 39–2640 (41 FR 23939; June 14, 1976), and by adding the following new airworthiness directive (AD):

Bell Helicopter Textron (Bell): Docket No. FAA–2013–0379; Directorate Identifier 2009–SW–26–AD.

(a) Applicability

This AD applies to Model 204B helicopters with a tail rotor pitch control chain (chain), part number (P/N) 204–001–739–003 or –105, installed, and Model 205A–1 helicopters with a serial number (S/N) 30001 through 30228, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a chain, which can grow quickly because of oscillatory loads and lead to premature failure of the chain, loss of the tail rotor blade pitch control, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 76–12–07, Amendment 39–2640 (41 FR 23939, June 14, 1976) as revised by Amendment 39–3569 (44 FR 55555, September 27, 1979).

(d) Compliance

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

(e) Required Actions

(1) For Model 205A–1 helicopters, before further flight, replace the tail rotor chain and cable control system with an airworthy tail rotor push-pull control system by installing an improved tail rotor hub and blade assembly kit, P/N 205–704–040–001 or 205–704–040–103, and then installing a push/pull anti-torque retrofit kit, P/N 205–704–057–001 or 205–704–057–101.

(2) For Model 204B helicopters:

(i) Within 10 hours time-in-service (TIS) and thereafter at intervals not to exceed 10 hours TIS, using a 10-power or higher magnifying glass and a light, visually inspect

each of the link segments in the chain for a crack. Also, slowly operate the cockpit anti-torque control pedals during the inspection so that the entire surface area of the chain in contact with the control quill sprocket (sprocket) is visibly accessible and can be inspected. Pay particular attention to the portion of the chain that travels over the sprocket and extends 6 inches to each side of the sprocket.

(A) If there is no cracked or broken link segment, lubricate the chain with a light preservative oil (C–125) or wipe with a cloth dampened in lubricating oil (C–010).

(B) If there is a cracked or broken link segment, before further flight, replace the chain with an airworthy chain.

(ii) Within 50 hours TIS, install a tail rotor cable and chain damper kit, P/N 204–706–130–101, as depicted in Figures 1 through 3, and by following the Accomplishment Instructions, paragraphs 2. through 9., of Bell Alert Service Bulletin (ASB) No. 204–79–7, dated August 21, 1979.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to Michael Kohner, ASW–170, Aviation Safety Engineer, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783, email *mike.kohner @faa.gov*.

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

(g) Additional Information

(1) Bell Alert Service Bulletin (ASB) No. 204–75–4, dated December 16, 1975, and Bell ASB No. 205–78–5, dated May 16, 1978, which are not incorporated by reference, contain additional information about the subject of this AD. For this service information, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*. 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.

(2) The subject of this AD is addressed in Transport Canada AD CF–1990–06R1, issued January 7, 2008.

(h) Subject

The Joint Aircraft System Component (JASC) Code is 6720: Tail Rotor Control System.

Issued in Fort Worth, Texas, on April 18, 2013.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–09764 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0380; Directorate Identifier 2012–SW–067–AD]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company (Robinson)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Model R22, R22 Alpha, R22 Beta, and R22 Mariner helicopters with certain fuel shut-off valves installed. This proposed AD would require replacing the fuel shut-off valve with a newer design fuel shut-off valve. This proposed AD is prompted by three accidents that occurred because the fuel shut-off valve was inadvertently moved to the "off" position. The proposed actions are intended to prevent inadvertent closing of the fuel valve, which could result in engine power loss and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by June 24, 2013.

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 Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505; telephone (310) 539–0508; fax (310) 539–5198; or at *http://www.robinsonheli.com/servelib.htm*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Danny Nguyen, Aerospace Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5247; email *danny.nguyen@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

Three accidents have occurred with R22 helicopters because the lever-handle fuel valve was inadvertently moved to the "off" position before

takeoff. Closing this valve will result in loss of power from the engine and subsequent loss of control of the helicopter. Robinson has subsequently re-designed the fuel valve with a smaller actuating handle and the valve spring loaded to the "on" position, to prevent inadvertent fuel shut-off.

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 helicopters of the same type design.

Related Service Information

Robinson has issued R22 Service Bulletin SB–105, dated September 7, 2011 (SB–105), which specifies procedures to replace the lever handle fuel shut-off valve part number (P/N) A670–1 revision A through H with a fuel shut-off valve P/N A670–1 revision I or later.

Proposed AD Requirements

This proposed AD would require, within 3 years, removing the fuel shut-off valve, P/N A670–1 revision A through H, and replacing the valve with a newly designed fuel shut-off valve.

Differences Between This Proposed AD and the Service Information

SB–105 specifies compliance within 500 flight-hours or by August 31, 2012. The proposed AD would require compliance within 3 years.

Costs of Compliance

We estimate that this proposed AD would affect 1,282 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Replacing the fuel shut-off valve will require about 2 work-hours at an average labor rate of $85 per hour, and required parts would cost about $260, for a cost per helicopter of $430, and a total cost to U.S. operators of $551,260.

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):

Robinson Helicopter Company (Robinson): Docket No. FAA–2013–0380; Directorate Identifier 2012–SW–067–AD.

(a) Applicability

This AD applies to Model R22, R22 Alpha, R22 Beta, and R22 Mariner helicopters, serial number 0002 through 4271, with a fuel shut-off valve part-number (P/N) A670–1 revision A through H installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as inadvertent closing of the fuel shut-off valve, which could result in loss of fuel to the engine, loss of engine power, and subsequent loss of control of the helicopter.

(c) Reserved

(d) Compliance

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

(e) Required Actions

(1) Within 3 years, remove the fuel shut-off valve and replace with an airworthy fuel shut-off valve that has a P/N other than a P/N listed in the applicability section of this AD.

(2) Do not install a fuel shut-off valve, P/N A670–1 revision A through H, on any helicopter.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Danny Nguyen, Aerospace Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5247; email *danny.nguyen@faa.gov*.

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

(g) Additional Information

Robinson R22 Service Bulletin SB–105, dated September 7, 2011, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505; telephone (310) 539–0508; fax (310) 539–5198; or at *http://www.robinsonheli.com/servelib.htm*. You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2823: Fuel Selector/Shut-Off Valve.

Issued in Fort Worth, Texas, on April 18, 2013.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–09771 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0465; FRL–9805–6]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Amendments to Vehicle Inspection and Maintenance Program for Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the Wisconsin Department of Natural Resources (WDNR) on June 7, 2012, concerning the State's vehicle inspection and maintenance (I/M) program in southeast Wisconsin. The revision amends I/M program requirements in the active control measures portion of the ozone SIP to reflect changes that have been implemented at the state level since EPA fully approved the I/M program on August 16, 2001. The submittal also includes a demonstration under section 110(l) of the Clean Air Act (CAA) addressing lost emission reductions associated with the program changes.

DATES: Comments must be received on or before May 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0465, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0465. 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 EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886–6061 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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

When submitting comments, remember to:

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

II. Background

The general purpose of motor vehicle I/M programs is to reduce emissions from in-use motor vehicles in need of repairs and thereby contribute to state and local efforts to improve air quality and to attain the National Ambient Air Quality Standards (NAAQS).

Wisconsin has operated an I/M program in southeastern Wisconsin since 1984. The program is presently operating in Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha Counties. Initially, all vehicles were inspected by

measuring tailpipe emission levels. Since July of 2001, all model year (MY) 1996 and later cars and light trucks have been inspected by scanning the vehicle's computerized second generation on-board diagnostic (OBDII) systems. EPA fully approved Wisconsin's I/M program on August 16, 2001, (66 FR 42949) including the program's legal authority and administrative requirements found in sections 100.20 and 285.30 of the Wisconsin Statutes and Chapters NR 485 and Trans 131 of the Wisconsin Administrative Code. As of July 2008, the program dropped tailpipe testing entirely and inspected all vehicles by scanning the OBDII systems. This change was the result of statutory changes in the State's 2007–2009 biennial budget which exempted model years of vehicles not Federally required to be equipped with the OBDII technology (MY 1995 and earlier cars and light trucks and MY 2006 and earlier heavy trucks).

III. What changes have been made to the Wisconsin I/M program?

The Wisconsin I/M SIP revision submitted on June 7, 2012, reflects several changes to the approved program. The most significant changes to the Wisconsin I/M program took effect beginning on July 2008 and include:

- The elimination of I/M program testing requirements for non-OBDII equipped vehicles. This change impacted MY 1968 through 1995 vehicles. These vehicles were previously subject to tailpipe testing.
- The elimination of I/M program testing requirements for gasoline vehicles with gross vehicle weight rating (GVWR) between 8,500 to 10,000 pounds (lbs). This change impacted MY 1996 through 2006 vehicles. Previously, all vehicles up to 10,000 lbs. were subject to testing.
- The addition of I/M program testing requirements for gasoline vehicles with a GVWR of 10,000 to 14,000 lbs. This change impacted MY 2007 and later vehicles.
- The addition of I/M program testing requirements for diesel vehicles with a GVWR up to 14,000 lbs. This change impacted MY 2007 and later vehicles.[1]

In addition to the changes discussed above, the June 7, 2012, submittal included a number of minor revisions to the program that do not have a significant impact on overall program operations or the emissions reductions associated with it. A full list of the changes submitted by Wisconsin for EPA approval include: Revisions to Section 100.20, Wisconsin Statutes (2001 Wisconsin Act 16, published August 31, 2001; 2003 Wisconsin Act 220, published April 22, 2003; 2005 Wisconsin Act 49, published October 27, 2005; 2007 Wisconsin Act 20, published October 26, 2007; 2009 Wisconsin Act 228, published May 19, 2010). Revisions to Section 285.30, Wisconsin Statutes (2003 Wisconsin Act 192, published April 21, 2004; 2007 Wisconsin Act 20, published October 26, 2007; 2007 Wisconsin Act 33, published December 3, 2007; 2009 Wisconsin Act 157, published March 24, 2010; 2009 Wisconsin Act 311, published May 26, 2010). Revisions to Wisconsin Administrative Code, Chapter NR 485 (Clearinghouse Rule CR 05–072 effective April 1, 2006; Clearinghouse Rule CR 10–049 effective December 1, 2010). Revisions to Wisconsin Administrative Code, Chapter Trans 131 (Clearinghouse Rule CR 01–121 effective April 1, 2002; Clearinghouse Rule CR 07–114 effective July 1, 2008; Clearinghouse Rule CR 10–088 effective January 1, 2011).

To support the changes outlined above, the revision also included a summary of the MOVES2010a modeling inputs used to calculate program benefits; a demonstration for meeting the modeling requirements for EPA's alternate low enhanced I/M performance standard; a section 110(l) demonstration that includes offset emission credits; and an emissions inventory evaluation by Sonoma Technology, Inc. WDNR held a public hearing on the Wisconsin I/M SIP revision on May 7, 2012, in Milwaukee, Wisconsin and allowed for written public comments until May 11, 2012. Full copies of the SIP revision are located in EPA's docket.

IV. What is EPA's analysis of the state's submittal?

a. Substantive I/M Requirements

EPA's requirements for basic and enhanced I/M programs are found in 40 CFR part 51, subpart S. The I/M SIP revision submitted by Wisconsin must be consistent with these requirements and must meet EPA's requirements for enforceability and section 110(l) requirements of the CAA. The specific aspects of I/M affected by the submitted revisions to the Wisconsin I/M program include vehicle coverage and exemptions, test procedures and standards, test equipment, waivers and compliance, enforcement against contractors, inspector training and licensing or certification, and the performance standard evaluation.

1. Vehicle Coverage—40 CFR 51.356

Under 40 CFR 51.356, the performance standard for enhanced I/M programs (including alternate low enhanced programs) assumes coverage of all MY 1968 and later light duty vehicles and trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Vehicles registered or required to be registered within the I/M program area boundaries, and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Under EPA regulations, other levels of coverage may be approved if the necessary emission reductions are achieved. The Wisconsin I/M program originally approved in the SIP by EPA, required testing of MY 1968 and later gasoline vehicles with a GVWR up to 10,000 lbs. Vehicles were first subject to the requirements when the vehicles were two model years old and every two years thereafter. The I/M SIP revision amends these provisions to eliminate emission inspection of vehicles MY 1995 and earlier, and exempts from testing off-road utility vehicles, lightweight utility vehicles, and low-speed vehicles. The I/M SIP revision adds emission inspection requirements for vehicles MY 2007 and later with a GVWR up to 14,000 lbs., while limiting emission inspection of vehicles MY 2006 and earlier to only those with a GVWR up to 8,500 lbs. Finally, the I/M SIP revision adds emission inspection of vehicles MY 2007 and later that are powered by diesel fuel. Under the revised requirements, vehicles are first subject to the requirements when vehicles are four model years old and every two years thereafter. However, as described in section IV.b below, EPA concludes that the state has demonstrated that it meets the alternate low enhanced performance standards with the revised program changes. Thus, the changes in vehicle coverage under the revised requirements are acceptable under 40 CFR 51.356.

2. Test Procedures-Standards—40 CFR 51.357

Under 40 CFR 51.357, I/M programs must establish and implement written test procedures and pass/fail standards for each model year and vehicle type. The Wisconsin I/M program originally approved in the SIP by EPA already contains detailed procedures for connecting to the OBDII system in 1996 and newer vehicles, information on

[1] The purpose of adding I/M testing requirements for heavier gasoline and diesel vehicles was to offset any lost emission reductions from the elimination of tailpipe testing.

readiness codes for OBDII tests, and pass/fail standards for OBDII equipped vehicles. Under the revised requirements Wisconsin establishes OBDII as the primary testing method and eliminates the previously established idle and transient tailpipe testing methods. The changes repeal references in the requirements relating to these now eliminated testing methods including emission equipment specifications and inspection requirements. In addition, the revised requirements eliminate the evaporative emission test also known as the "gas cap test", which was previously required but is no longer necessary with OBDII technology. This part of the submittal meets the requirements of 40 CFR 51.357 and 40 CFR 51.358 of the Federal I/M regulation.

3. Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any measurement on subject vehicles. The Federal I/M regulation requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications must describe the analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures. The Wisconsin I/M program originally approved in the SIP by EPA already contains detailed technical specifications for program test equipment that mirror EPA's requirements and guidance. As mentioned before, the revised changes repeal references in the requirements relating to idle and transient tailpipe testing methods, including emission equipment specifications and inspection requirements retaining the requirements and specifications for OBDII testing. This part of the submittal continues to meet the requirements of 40 CFR 51.358 of the Federal I/M regulation.

4. Waivers and Compliance via Diagnostic Inspection—40 CFR 51.360

The Federal I/M regulation allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. An expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver in enhanced I/M areas. An expenditure of at least $75 for pre-1981 vehicles and $200 for 1981 and newer vehicles is required in order to qualify for a waiver in basic I/M areas. Waivers can only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs must not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Under the I/M program approved in the SIP, Wisconsin established waiver limits in section 110.20(13) of the Wisconsin Statutes and in NR 485.045(1) requiring an expenditure of at least $75 for pre-1981 vehicles and $200 for 1981 and newer vehicles in order to qualify for a waiver in Sheboygan County and an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the CPI as compared to the CPI for 1989, as established by the EPA, for the remaining I/M counties. Sheboygan County had a lower repair cost limits since its nonattainment classification established in 1992 was at a lower level than that for the other six counties. In the Wisconsin I/M SIP revision, the requirements have expanded the coverage of the inflation adjusted repair cost limit in NR 485.045 to all counties subject to the I/M program and to vehicles with OBDII systems, thereby raising the lower limits for Sheboygan County. In addition, the revision clarifies that to obtain a waiver of compliance on the basis of statutory repair cost limit, a vehicle must pass a waiver emission equipment inspection. This part of the submittal continues to meet the requirements of 40 CFR 51.360.

5. Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364 and Inspector Training and Licensing or Certification—40 CFR 51.367

The Federal I/M regulation requires all inspectors to be formally trained and licensed or certified to perform inspections. In addition, the regulation requires the establishment of minimum penalties for violations of program rules and procedures that can be imposed against stations, contactors and inspectors. The state must include in the SIP the legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations. The Wisconsin I/M program originally approved in the SIP by EPA already includes the legal authority that addresses these requirements. However, the Wisconsin I/M SIP revision includes amendments to the legal authority that also allow the State to establish methods for emission testing and delivery of testing services, in addition to the previously established method of a single contractor. It establishes as the service delivery method a possibility of contractors who perform the test at their own facilities, or by subcontracted testing at subcontractors' facilities, or at self-service facilities where a vehicle owner may test the vehicle. The revisions expands the inspector training and licensing requirements to include all employees of any authorized inspection facility subcontractor and expands the penalty and audit requirements originally approved by EPA to include other authorized testing facilities. This part of the submittal meets the requirements of 40 CFR 51.364 and 51.365.

b. Performance Evaluation

As part of the June 7, 2012, I/M SIP revision, WDNR provided an updated performance evaluation using the EPA's motor vehicle emissions simulator model, MOVES2010a.[2] The updated performance evaluation included a summary report outlining the modeling results and paper copies of the MOVES2010a modeling input files. The purpose of the updated performance evaluation is to demonstrate that Wisconsin's vehicle I/M program, as amended, would continue to meet the Federal enhanced I/M performance standard in southeast Wisconsin. The results of WDNR's analysis are summarized in Tables 1 and 2 below, which show that the emissions reductions achieved by the Wisconsin I/M program, as amended, are higher than those achieved under the performance standards. The amended Wisconsin I/M program thus continues to achieve greater emissions reductions than the Federal model program because the Wisconsin I/M program includes elements that go beyond Federal I/M requirements.

[2] EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010.

TABLE 1—SUMMARY OF RESULTS OF WDNR'S ALTERNATIVE LOW ENHANCED PERFORMANCE MODELING FOR SIX COUNTY MILWAUKEE-RACINE NONATTAINMENT AREA (KENOSHA, MILWAUKEE, OZAUKEE, RACINE, WASHINGTON AND WAUKESHA COUNTIES)

Year	2002		2009		2012		2015	
	VOC [3]	NO_X [4]	VOC	NO_X	VOC	NO_X	VOC	NO_X
I/M Performance Standard Benefits (grams/mile)	0.071	0.040	0.039	0.009	0.025	0.004	0.017	0.002
Actual I/M Program Benefits (grams/mile)	0.134	0.193	0.060	0.097	0.037	0.063	0.027	0.041

[3] Volatile organic compound.
[4] Oxides of nitrogen.

TABLE 2—SUMMARY OF RESULTS OF WDNR'S ALTERNATIVE LOW ENHANCED PERFORMANCE MODELING FOR SHEBOYGAN COUNTY NONATTAINMENT AREA

Year	2002		2009		2012		2015	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
I/M Performance Standard Benefits (grams/mile)	0.080	0.044	0.044	0.009	0.030	0.005	0.020	0.002
Actual I/M Program Benefits (grams/mile)	0.113	0.165	0.065	0.095	0.044	0.069	0.032	0.045

Based on our review of the I/M SIP revision, EPA finds that WDNR's performance standard evaluation and use of the alternate low enhanced I/M performance standard to be acceptable. EPA also finds that the Wisconsin I/M program, as amended, exceeds the alternate low enhanced performance standard in both the Milwaukee-Racine and Sheboygan County nonattainment areas as required under 40 CFR 51.351.

c. Demonstrating Noninterference With Attainment and Maintenance Under CAA Section 110(l)

Revisions to SIP-approved control measures must meet the requirements of CAA section 110(l) to be approved by EPA. Section 110(l) states:

"The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP approved program, as long as actual emissions in the air are not increased. "Equivalent" emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the active portion of the SIP. In order to show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emission in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

The Wisconsin I/M SIP revision includes a 110(l) demonstration that uses equivalent emissions reductions to compensate for emission reduction losses resulting from changes to the SIP approved I/M program in southeast Wisconsin. The submittal indicates that WDNR used the latest version of EPA's motor vehicle emissions model program, MOVES2010a, to estimate the emissions effects of the program changes. Based on our review of the information provided, EPA finds that WDNR used reasonable methods and appropriate models in estimating the emissions effects of the program changes. WDNR's MOVES modeling shows that the changes to the Wisconsin I/M program result in fewer reductions than would have otherwise been obtained from the pre-2008 I/M program approved in the SIP by EPA. Table 3 below summarizes WDNR's emissions calculations comparing the current program to the SIP approved I/M program in units of tons per summer weekday (tpswd) and highlights the emissions difference that needs to be addressed as part of the 110(l) demonstration.

TABLE 3—(SIP I/M PROGRAM VS. CURRENT I/M PROGRAM)

Year	SIP I/M program		Revised I/M program		Emissions difference	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
2009	4.55	6.53	3.47	5.59	1.08	0.94
2012	3.55	4.92	2.31	3.97	1.24	0.95
2015	2.59	3.14	1.76	2.66	0.83	0.48
2018	1.88	2.06	1.46	1.85	0.42	0.21
2022	1.59	1.49	1.27	1.35	0.32	0.14

The Wisconsin I/M program reduces emissions of VOC and NO_X. VOC and NO_X are contributors to the formation of ground-level ozone and fine particular matter. Thus, the increase in VOC and NO_X needs to be offset with equivalent (or greater) emissions reductions from another control measure in order to demonstrate non-interference with the 8-hour ozone and particulate matter ($PM_{2.5}$) NAAQS. Although the program also results in carbon monoxide (CO) emissions reductions, substitute CO emissions reductions are not needed for this demonstration, because southeast Wisconsin is attaining the CO NAAQS and CO levels in the area are well below the standard. WDNR has estimated that the 10.13 tpswd of CO lost from the I/M program changes in 2012, the year where the amended changes have the greatest emission impact, represent only 0.98 percent of the total CO emissions inventory in the region and it is unlikely that the amendments to the Wisconsin I/M program will interfere with the area's ability to continue to attain the CO NAAQS.

To address the projected loss of VOC and NO_X emission reductions, WDNR reviewed its records of permitted emissions sources in southeast Wisconsin and identified those sources that have ceased operation since the Wisconsin I/M program changes have taken place. WDNR identified eleven facilities (See table 4) in the 6 County Milwaukee-Racine (Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha Counties) and Sheboygan County nonattainment areas that have permanently closed and have expired permits that have been revoked. The expiration and revocation of these sources' permits allows the State to use the emission credits associated with them for other purposes under the SIP and makes such reductions permanent and enforceable. WDNR accounted for 506.47 tons of VOC per year and 72.71 tons of NO_X per year based on maximum annual reported emissions from 2005 through 2009.

TABLE 4—NO_X AND VOC EMISSIONS FROM CLOSED FACILITIES IN SOUTHEAST WISCONSIN

Name	FID	Date closed	Emission reductions	
			VOC (tons)	NO_X (tons)
INPRO CORPORATION	268165150	06/30/09	21.33	0.00
PHOENIX COLOR CORPORATION	241227910	08/31/11	07.36	0.08
MIDWEST COMPOSITE TECHNOLOGIES, INC	268270750	12/31/10	19.26	01.28
ROCK TENN CONVERTING COMPANY	241017920	06/30/11	24.35	0.98
CHARTER WIRE DIVISION COMPANY	241041130	12/31/09	37.70	0.00
GREDE FOUNDRIES INC.—MILWAUKEE ALLOY	241027600	11/30/07	34.90	1.84
MILWAUKEE GRAY IRON, LLC.	241006370	12/31/08	53.50	31.29
DELPHI ENERGY & CHASSIS SYSTEMS	241045750	06/10/10	0.76	19.73
VIASYSTEMS MILWAUKEE, INC.	241116700	01/01/09	19.10	3.44
S.C JOHNSON & SON–WAXDALE/POLYMER	252236380	04/01/10	11.40	4.26
MOMENTIVE SPECIALITY CHEMICALS, INC. (LAWTER INTERNATIONAL, INC.)	230089090	03/27/09	276.81	9.81
TOTAL SIP CREDITS FROM SHUTDOWN FACILITIES			506.47	72.71

In addition, EPA policy allows for substitution between VOC and NO_X emissions in its guidance on reasonable further progress. This guidance recommends that states assume, as an approximation, that equivalent percent changes in the area's inventory for the respective pollutant yield an equivalent change in ozone levels. For example, decreasing area NO_X emissions by 3 percent would have the same effect as decreasing area VOC emissions by 3 percent. Stated another way, if an area has twice as many tons of NO_X emissions as VOC emissions, then 2 tons of NO_X emissions would be assumed to have the same effect on ozone as 1 ton of VOC emissions. Following this approach WDNR used a 4 to 1 NO_X to VOC conversion ratio based on a top-down evaluation performed by Sonoma Technology, Inc. and outlined in a report dated May 2011, entitled "A Top-Down Emissions Inventory Evaluation for the Upper Midwest" using 2005 and 2008 emissions inventories provided by the Lake Michigan Air Directors Consortium.

Table 5 below summarizes WDNR's I/M emissions make-up demonstration. The table specifically highlights the annual emissions shortfall that has taken place since the Wisconsin I/M program changes occurred and outlines the amount of VOC and NO_X emission credits that are being used to cover the shortfall using the VOC to NO_X substitution approach discussed above. Based on the use of permanent, enforceable, contemporaneous, surplus emissions reductions achieved through the shutdown of permitted emissions sources, EPA believes that the revisions to the Wisconsin I/M program do not interfere with southeast Wisconsin's ability to demonstrate compliance with the 8-hour ozone and $PM_{2.5}$ NAAQS.

TABLE 5—I/M EMISSIONS MAKE-UP DEMONSTRATION

Year	MOVES emissions shortfall		SIP credits from shutdown facilities		Trading VOC emissions for NO_X emissions [5]		Revised SIP redits from shutdown facilities		Difference (shortfall—Credits) [6]	
	VOC (tons)	NO_X tons)	VOC (tons)	NO_X (tons)	VOC (tons)	NO_X (tons)	VOC (tons)	NO_X (tons)	VOC (tons)	NO_X (tons)
2009	341.18	302.15	455.66	63.60	70.00	280.00	385.66	343.60	−44.47	−41.45
2012	394.45	306.29	506.47	72.71	70.00	280.00	436.47	352.71	−42.02	−46.42
2015	262.29	154.04	506.47	72.71	70.00	280.00	436.47	352.71	−174.18	−198.66
2018	134.04	66.46	506.47	72.71	70.00	280.00	436.47	352.71	−302.43	−286.25

TABLE 5—I/M EMISSIONS MAKE-UP DEMONSTRATION—Continued

Year	MOVES emissions shortfall		SIP credits from shutdown facilities		Trading VOC emissions for NO_X emissions[5]		Revised SIP redits from shut-down facilities		Difference (shortfall—Credits)[6]	
	VOC (tons)	NO_X tons)	VOC (tons)	NO_X (tons)	VOC (tons)	NO_X (tons)	VOC (tons)	NO_X (tons)	VOC (tons)	NO_X (tons)
2022	103.41	45.37	506.47	72.71	70.00	280.00	436.47	352.71	−333.05	−307.34

[5] 4:1 VOC to NO_X Ratio (*i.e.*, 1 ton of VOC = 4 tons of NO_X).
[6] Negative numbers indicate that the emissions shortfall has been adequately covered.

EPA also examined whether the amendments to the approved I/M program in southeast Wisconsin have interfered with attainment of other air quality standards. Southeast Wisconsin is designated attainment for all other standards including sulfur dioxide and nitrogen dioxide. EPA has no reason to believe that the amendments to the approved I/M program in southeast Wisconsin have caused or will cause the area to become nonattainment for any of these pollutants. In addition, EPA believes that the amendments to the approved I/M program in southeast Wisconsin will not interfere with the area's ability to meet any other CAA requirement.

Based on the above discussion and the state's 100(l) demonstration, EPA believes that the changes to the Wisconsin I/M program would not interfere with attainment or maintenance of any of the NAAQS in both the Milwaukee-Racine and Sheboygan County nonattainment areas and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(l).

V. What action is EPA taking?

EPA is proposing to approve the revisions to the Wisconsin ozone SIP submitted on June 7, 2012, concerning the I/M program in southeast Wisconsin. EPA finds that the revisions meet all applicable requirements and will not interfere with reasonable further progress or attainment of any of the NAAQS.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 12, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–09536 Filed 4–24–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2012–0934; FRL–9789–1]

RIN 2060–AR52

2013 Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations for New or Substantially Revised Data Elements

Correction

In proposed rule document 2013–06093, appearing on pages 19802–19877 in the issue of Tuesday, April 2, 2013, make the following correction:

§ 98.173 Calculating GHG emissions. [Corrected]

On page 19854, the equation titled as "(Eq. Q–5)" is corrected to read as set forth below:

$$CO_2 = \frac{44}{12} * \left[(Iron) * (C_{Iron}) + (Scrap) * (C_{Scrap}) + (Flux) * (C_{Flux}) + (Electrode) * (C_{Electrode}) \right.$$
$$+ (Carbon) * (C_{Carbon}) - (Steel) * (C_{Steel}) + (F_g) * (C_{gf}) * \frac{MW}{MVC} * 0.001 - (Slag) \quad \text{(Eq. Q-5)}$$
$$\left. * (C_{Slag}) - (R) * (C_R) \right]$$

[FR Doc. C1–2013–06093 Filed 4–24–13; 8:45 am]
BILLING CODE 1505–01–D

Notices

Federal Register
Vol. 78, No. 80
Thursday, April 25, 2013

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LPS–13–0020]

National Sheep Industry Improvement Center: Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection 0581–0263: National Sheep Industry Improvement Center (NSIIC).

DATES: Comments on this notice must be received by June 24, 2013 to be assured of consideration.

Additional Information or Comments: Comments should be posted online at *www.regulations.gov*. Comments received will be posted without change, including any personal information provided. All comments should reference the docket number, AMS–LS–13–0020; the date of submission; and the page number of this issue of the **Federal Register**. Comments may also be sent to Kenneth R. Payne, Director; Research and Promotion Division; Livestock, Poultry, and Seed Program; Agricultural Marketing Service; U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 2608–S, STOP 0251, Washington, DC 20250; Telephone 202/720–1115; Fax: 202/720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at *www.regulations.gov*.

SUPPLEMENTARY INFORMATION:

Title: National Sheep Industry Improvement Center.

OMB Number: 0581–0263.

Expiration Date of Approval: October 31, 2013.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the NSIIC. The NSIIC was initially authorized under the Consolidated Farm and Rural Development Act (Act). The Act, as amended, was passed as part of the 1996 Farm Bill (Pub. L. 104–127, 110 Stat. 888). The initial legislation included a provision that privatized the NSIIC 10 years after its ratification or once the full appropriation of $50 million was disbursed. Subsequently, the NSIIC was privatized on September 30, 2006, and the NSIIC's office was closed in early 2007.

In 2008, the NSIIC was re-established under Title XI of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), also known as the 2008 Farm Bill. The 2008 Farm Bill repealed the requirement in section 375(e)(6) of the Act to privatize the NSIIC. Additionally, the 2008 Farm Bill provided for $1,000,000 in mandatory funding for fiscal year 2008 from the Commodity Credit Corporation for the NSIIC to remain available until expended; as well as authorization for appropriations in the amount of $10 million for each of fiscal years 2008 through 2012.

The primary objective of the NSIIC is to assist U.S. sheep and goat industries by strengthening and enhancing the production and marketing of sheep, goats, and their products in the United States. The information collection requirements in the request are essential to carry out the intent of the enabling legislation.

AMS accepts nominations for membership on the NSIIC Board of Directors (Board) from national organizations that (1) consist primarily of active sheep or goat producers in the United States and (2) have the primary interest of sheep or goat production in the United States.

The forms used in this collection are: Nominations for Appointments; AD–755 Background Information Form (OMB No. 0505–0001); and Nominee's Agreement to Serve.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.21 hour per response.

Respondents: National organizations submitting nominations to the Board who (1) consist primarily of active sheep or goat producers in the United States and (2) have the primary interest of sheep or goat production in the United States.

Estimated number of Respondents: 10.

Estimated Total Annual Responses: 30.

Estimated number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden: 6.25 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Kenneth R. Payne, Director; Research and Promotion Division. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: April 19, 2013.

Rex A. Barnes,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09740 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Minority Farm Register

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension of a currently approved information collection for the Minority Farm Register. The Minority Farm Register is a voluntary register of minority farm and ranch operators, landowners, tenants and others with an interest in farming or agriculture. USDA Office of Advocacy and Outreach uses the collected information to better inform minority farmers about USDA programs and services.

DATES: We will consider comments that we receive by June 24, 2013.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Ternechue Butler, Outreach Specialist, Farm Service Agency, STOP 0539, 1400 Independence Avenue SW, Washington, DC 20250–0539.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be obtained from Ternechue Butler at the above address.

FOR FURTHER INFORMATION CONTACT: Ternechue Butler, Outreach Specialist, Farm Service Agency, (202) 720–6870.

SUPPLEMENTARY INFORMATION:

Title: USDA Minority Farm Register.

OMB Number: 0560–0231.

Expiration Date: 10/31/2013.

Type of Request: Extension.

Abstract: The Minority Farm Register is a voluntary register of minority farm and ranch operators, landowners, tenants and others with an interest in farming or agriculture. The registrant's name, address, email, phone number, race, ethnicity, gender, farm location, and signature will be collected; however, the registrant's name, address, and signature are the only items required to register. Providing this information is completely voluntary. USDA's Office of Advocacy and Outreach will use this information to help inform minority farmers and ranchers about programs and services provided by USDA agencies.

The Minority Farm Register is maintained by FSA and jointly administered by FSA and USDA's Office of Advocacy and Outreach. Because USDA partners with community-based organizations, minority-serving educational institutions, and other groups to communicate USDA's program and services, the Office of Advocacy and Outreach may share information collected with these organizations for outreach purposes. The race, ethnicity, and gender of registrants may be used to provide information about programs and services that are designed for these particular groups. Information about the Minority Farm Register is available on the Internet to ensure that the program is widely publicized and accessible to all.

Respondents: Individuals and households.

Estimated Number of Respondents: 5000.

Estimated Average Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 5000.

Estimated average time to respond: 5 minutes (0.083 hours) and 1 hour traveling time.

Estimated Total Annual Burden on Respondents: 4667 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on April 10, 2013.

Juan M. Garcia,

Administrator, Farm Service Agency.

[FR Doc. 2013–09745 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Idaho Resource Advisory Committee (RAC) will meet in Boise, Idaho. The RAC is authorized under the Secure Rural Schools and Community Self-Determination Act of 2000, (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of the RAC is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is review Title II project status and adjustments related to Title II spending availability.

DATES: The meeting will be held Thursday, May 30, 2013, at 10:00 a.m. (MDT).

ADDRESSES: The meeting will be held at Idaho Department of Fish and Game Headquarters, Trophy Room, 600 South Walnut Street, Boise, Idaho. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Payette National Forest, New Meadows Ranger District, 3674 Highway 95, New Meadows, Idaho 83654. Please call ahead to Kim Pierson, Designated Forest Official by phone at (208) 347–0301 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kim Pierson, Designated Forest Official, Payette National Forest, New Meadows Ranger District at (208) 347–0301, or by email to *kpierson@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review Title II project status and adjustments related to Title II spending availability. Anyone who would like to bring related matters to the attention of the RAC may file written statements with the RAC staff before the meeting. Written comments and requests for time for oral comments must be sent to Kim Pierson, Designated Forest Official, Payette National Forest, New Meadows Ranger District by email to *kpierson@fs.fed.us* or via facsimile to (208) 347–0309.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled, "**FOR FURTHER INFORMATION CONTACT**". All reasonable accommodation requests are managed on a case-by-case basis.

Dated: April 18, 2013.

Keith B. Lannom,

Forest Supervisor, Payette National Forest.

[FR Doc. 2013–09717 Filed 4–24–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC636

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for four new scientific research permits, six permit modifications, and five research permit renewals.

SUMMARY: Notice is hereby given that NMFS has received 15 scientific research permit application requests relating to Pacific salmon, sturgeon, and eulachon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on May 28, 2013.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to *nmfs.nwr.apps@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: 503–231–2314), Fax: 503–230–5441, email: *Robert.Clapp@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened California Coastal (CC); threatened Central Valley spring-run (CVS); threatened Lower Columbia River (LCR); threatened Puget Sound (PS); endangered Sacramento River winter-run (SRW); threatened Snake River (SR) fall-run; threatened SR spring/summer-run (spr/sum); endangered Upper Columbia River (UCR) spring-run; threatened Upper Willamette River (UWR).

Steelhead (*O. mykiss*): Threatened UCR; threatened SR; threatened middle Columbia River (MCR); threatened California Central Valley (CCV); threatened Central California Coast (CCC); threatened LCR; threatened Northern California (NC); threatened PS; threatened South-Central California Coast (SCC); endangered Southern California (SC); threatened UWR.

Sockeye salmon (*O. nerka*): Endangered SR; threatened Ozette Lake (OL).

Chum salmon (*O. keta*): Threatened Columbia River (CR); threatened Hood Canal summer-run (HCS).

Coho salmon (*O. kisutch*): Endangered CCC; threatened LCR; threatened Oregon Coast (OC); threatened Southern Oregon/Northern California Coast (SONCC).

Eulachon (*Thaleichthys pacificus*): Threatened southern (S).

Green sturgeon (*Acipenser medirostris*): Threatened southern (S).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1422—3R

The U.S. Forest Service (USFS) is seeking to renew for five years a permit that currently allows them to annually take juvenile endangered UCR Chinook salmon, juvenile endangered UCR steelhead, and juvenile threatened MCR steelhead during research activities taking place at various points in the Yakima, Methow, Entiat, and Wenatchee River drainages in Washington State. Under the renewed permit, the fish would be captured (using minnow traps, hook-and-line angling, and electrofishing equipment), identified, and immediately released. The purpose of the research is to determine fish distribution in the subbasins listed above. The research would benefit the fish by giving land managers information they need in order to design forest management activities (e.g., timber sales, grazing plans, road building) in such a way as to conserve listed species. The USFS does not intend to kill any of the listed fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 10020—3M

The City of Bellingham (COB) is seeking to modify a five-year research permit that currently allows them to take juvenile PS Chinook salmon and PS steelhead. The sampling would take place in Cemetery Creek, a tributary of Whatcom Creek in Bellingham, WA. The purpose of the study is to assess the effectiveness of habitat restoration measures implemented as part of the Whatcom Creek Long-term Restoration Plan and would document fish population trends. The COB proposes to capture fish using a smolt trap placed in Cemetery Creek. Fish would be identified by species, measured, have a tissue sample taken (to determine their origin), and be released. This research would benefit the affected species by informing future restoration designs as well as providing data to support future

enhancement projects. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 10042—3R

The U.S. Geological Survey (USGS) is seeking to renew for five years a permit that currently allows them to take all the Columbia, Snake, and Willamette River fish (including green sturgeon) listed in this notice while conducting studies of the interactions between American shad (*Alosa sappidissima*) and salmonid restoration efforts in the lower Columbia River. The purpose of the study is to determine how shad benefit or detract from salmonid restoration programs. A secondary purpose is to collect large-scale suckers for contaminant analysis. The listed fish will benefit from these efforts as managers learn how the non-native shad affect listed salmonids and the programs designed to restore them. The applicant proposes to capture the fish using a variety of methods: gillnetting, electrofishing, angling, seines, cast nets, and hook-and-line angling. All listed fish captured during the research would be immediately returned to the water at the point of capture. The applicant does not propose to kill any listed fish, but a small number may die as an unintended result of the activities.

Permit 14283—2R

Environmental Assessment Services (EAS) is seeking to renew for five years a permit that currently allows them to annually take listed fish in the Columbia River in support of the U.S. Department of Energy's Hanford Site Cleanup Mission and regulatory drivers under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The research would take place in four areas the Columbia River waters extending from upstream of Wanapum Dam to McNary Dam. The researchers are targeting non-listed resident fish but may also capture UCR steelhead and Chinook, MCR steelhead, and SR fall Chinook, SR spr/sum Chinook, and SR Steelhead. The research would benefit listed fish by helping monitor and reduce contamination from the Hanford Nuclear Reservation. The researchers would capture the fish using electrofishing, hook and line, and long-line techniques. Any captured listed fish would immediately be released. The researchers do not propose to kill any listed fish but a small number may inadvertently be killed by the activities

Permit 10114—2R

Science Applications International Corporation (SAIC) is seeking to renew for five years a research permit that allows them to take juvenile and adult PS Chinook salmon, HCS chum salmon, and PS steelhead. The sampling would take place throughout the marine waters of Puget Sound, Hood Canal, and the Strait of Juan de Fuca. The Washington State Department of Ecology has identified—under the Puget Sound Initiative—bays throughout Puget Sound for focused, accelerated sediment cleanup and pollution source control. The purpose of the study is to develop work plans and conduct bay-wide sediment characterizations to identify contaminated areas that would require cleanup under the Washington State Sediment Management Standards. The SAIC proposes to capture fish using otter trawls, beam trawls, beach seines, and crab pots. Adult salmonids would be identified by species, measured, and released. All other fish would be anesthetized, identified by species, measured for length, allowed to recover from the anesthetic, and released. Only the first 30 salmonids of each species would be measured; any others would be identified, enumerated, and released. This research would benefit listed species by helping minimize their exposure to contaminants during cleanup operations. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 15207—2R

The Oregon State University (OSU) is seeking a renew a permit that currently allows them to annually take all the listed salmonids in the Columbia Basin and Oregon coast covered by this notice. The research is designed to help managers assess the condition of rivers and streams in the 12 conterminous western states and evaluate and develop scientifically and statistically rigorous field protocols for assessing large rivers and their tributaries. The study was previously conducted under Permit 1559—4A and Permit 15207 and will benefit listed species by providing baseline information about water quality in the study areas and helping managers enforce the Clean Water Act in those river systems where listed fish are present. The OSU researchers would capture fish (using boat- and backpack electrofishing equipment) in randomly selected river reaches, sample them for biological information, and release them. The researchers will try to avoid adult salmonids, but some may be encountered. The researchers do not intend to kill any fish being captured but some may die as an unintentional result of the research activities.

Permit 16333—2M

The Northwest Fisheries Science Center (NWFSC) is seeking to modify a five-year research permit they currently hold. The modified permit would increase the amounts of take they are allotted and allow them to annually take CC, CVS, LCR, PS, SRW, SRF, SRSS, UCRS, and UWR Chinook salmon; CR and HCS chum salmon; CCC, LCR, OC, SO/NCC coho salmon; OL and SR sockeye salmon; CCV, CCC, LCR, MCR, NC, PS, SRB, SCC, SC, UCR, and UWR steelhead; and S green sturgeon. The NWFSC research may also cause them to take S eulachon, for which there are currently no ESA take prohibitions. All green sturgeon and eulachon take would be adult take, but the salmonid take could be either adult or sub-adult. The surveys would range from the US-Canada border to the US-Mexico border, take place at depths of 55m to 1,280m, and run from May through October each year. The purpose of the survey is to generate fisheries-independent indices of stock abundance to support stock assessment models for commercially and recreationally harvested groundfish species. The survey collects data on 90+ species contained in the pacific Coast Groundfish Fisheries Management Plan (FMP) and is intended to fulfill the mandates included in the Magnuson-Stevens Sustainable Fisheries Act. The objectives of the survey are: (1) Quantify the distribution and relative abundance of commercially valuable groundfish species; (2) obtain biological data from species of interest including length, weight, gender, and maturity; (3) determine age structures for FMP species; (4) record net mensuration and trawl performance data; and (5) collect oceanographic data. The NWFSC proposes to capture fish using bottom trawls. An "Aberdeen" style net with a small-mesh (1½" stretched measure or less) liner in the cod end would be towed for about 15 minutes per tow. Acoustic instruments attached to the nets would record various aspects of their mechanical performance. Catches would be sorted by species or other appropriate taxon and listed species processed first and released as soon as possible. The research would benefit listed species by increasing the understanding of the connections between various oceanographic conditions and fish survival in the marine environment. And that information, in turn, would be used to inform future decisions regarding listed

species management and recovery. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the activities.

Permit 16335—2M

The NWFSC is seeking to modify a five-year research permit they currently hold. The modified permit would increase the amounts of take they are allotted and allow them to annually take sub-adult and adult CC, CVS, LCR, PS, SRW, SRF, SRSS, UCRS, and UWR Chinook salmon; CR and HCS chum salmon; CCC, LCR, OC, SO/NCC coho salmon; and OL and SR sockeye salmon. The NWFSC research may also cause them to take adult S eulachon, for which there are currently no ESA take prohibitions. The surveys would range from south of Monterey, California to the Dixon Entrance, Alaska/British Columbia—proceeding along the continental shelf and upper slope between June and September every year. Scientists from the NWFSC and Department of Fisheries and Oceans Canada (DFO) would jointly conduct biennial integrated acoustic and trawl (IAT) surveys on Pacific hake (*Merluccius productus*). The purpose of the IAT survey is to assess the distribution, abundance, and biology of Pacific hake. Age-specific estimates of total population abundance derived from the survey are key data for the joint U.S.-Canada Pacific hake stock assessments; they ultimately act as the foundation for advice on U.S., tribal, and international harvest levels. The NWFSC proposes to capture fish using an Aleutian wing 24/20 mid-water trawl. Surveys would be conducted in a series of transects generally oriented east-west and spaced at 10 nautical-mile intervals. Trawl samples would be used to classify acoustic backscatter readouts by species and size. Catches would be sorted by species or other appropriate taxon and listed species would be processed and released before any other species. The research would benefit listed species by helping make the West Coast hake fishery more target-specific and thereby reducing bycatch of other species. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the proposed activities.

Permit 16337—2M

The NWFSC is seeking to modify a five-year research permit they currently hold. The modified permit would increase the amounts of take they are allotted and allow them to annually take sub-adult and adult CC, CVS, LCR, PS, SRW, SRF, SRSS, UCRS, and UWR Chinook salmon; CR and HCS chum salmon; CCC, LCR, OC, SO/NCC coho salmon; and OL and SR sockeye salmon. The NWFSC research may also cause them to take adult S eulachon—for which there are currently no ESA take prohibitions. The surveys would range primarily from the Strait of Juan de Fuca Washington down to the central Oregon coast, though additional surveys may be undertaken that would range from south of Monterey Bay, California up to the Dixon Entrance, Alaska/British Columbia. Surveys would be conducted from June to early September and may run from as few as 30 days up to as many as 70. The purpose of these surveys is to investigate research topics suggested by hake stock assessment scientists, including: (1) Comparing acoustic estimates for hake between two vessels, (2) conducting research on acoustic differentiation between hake and Humboldt squid (*Dosidicus gigas*), and (3) confirming that ground-truth tows (mid-water and bottom trawls) are adequately characterizing schools of hake. Other research may be conducted as well and may include hake target strength investigations, acoustic broadband research, and night tows for pelagic fish species. The cruises would test automatic underwater vehicles, acoustic systems, plankton sampling, and limited mid-water trawling. The NWFSC proposes to capture fish using an Aleutian wing 24/20 mid-water trawl and a Poly Nor'eastern high-opening bottom trawl equipped with roller gear. Catches would be sorted by species or other appropriate taxon and listed species would be processed and released before any other species. The research would benefit listed species by helping make the West Coast hake fishery more target specific and thereby reducing bycatch of other species. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the proposed capture method.

Permit 16338—2M

The NWFSC is seeking to modify a five-year research permit they currently hold. The modified permit would increase the amounts of take they are allotted and allow them to annually take CC, CVS, LCR, PS, SRW, SRF, SRSS, UCRS, and UWR Chinook salmon; CR and HCS chum salmon; CCC, LCR, OC, SO/NCC coho salmon; OL and SR sockeye salmon; CCV, CCC, LCR, MCR, NC, PS, SRB, SCC, SC, UCR, and UWR steelhead; and S green sturgeon. The NWFSC research may also cause them to take S eulachon—a species for which there are currently no ESA take prohibitions. All take for take for green sturgeon and eulachon would be adult take, while salmon and steelhead take may be either subadult or adult take. The surveys would range from northern California to Washington over the continental shelf in waters shallower than 1,000m. The purpose of these surveys are to test and evaluate bycatch reduction devices (BRDs) and trawl gear modifications (i.e. headrope/footrope modifications) that are designed to reduce: (1) Chinook salmon and rockfish bycatch in the U.S. Pacific hake fishery; (2) Pacific halibut, sablefish, and rockfish bycatch in the groundfish bottom trawl fishery; (3) and juvenile and unmarketable-sized fish discards in mid-water and bottom trawl groundfish fisheries. The NWFSC proposes to capture fish using mid-water and bottom trawl nets. Catches would be sorted by species or other appropriate taxon and listed species would be processed and released before any other species. The research would benefit listed species by helping make the West Coast hake fishery more target-specific and thereby reducing bycatch of other species. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the proposed capture method.

Permit 16702—2M

The NWFSC is seeking to modify a five-year research permit that currently allows them to annually take juvenile PS Chinook salmon and PS steelhead. The modified research would increase the amount of take the researchers are allotted and would also allow them to take adult S eulachon—a species for which there are currently no ESA take prohibitions. The survey sites would be located in the Snohomish River estuary. The purpose of these surveys is to monitor habitat use of juvenile PS Chinook salmon in response to estuary restoration at the Qwuloolt restoration site—both before and after the planned levee breach in late 2014. Specifically, the goals are to identify the life history types present, their spatial and temporal distribution, their feeding ecology, and interactions with other biota. Sampling would occur year-round: biweekly from February to September and then once a month from October to January. The NWFSC proposes to capture fish using beach seines (in mainstem habitat), pole seines (inside restoration site prior to breaching), and fyke traps (in tidal channels). The researchers would use MS–222 to kill up to 15 marked and unmarked juvenile Chinook and take stomach, otolith, and other tissue samples from them. Any PS Chinook unintentionally killed during the research would be used in lieu of a fish that would otherwise be sacrificed. All

other juvenile PS Chinook and all PS steelhead captured would be measured (fork length), counted, and released. The research would benefit the listed species by helping improve salmon habitat restoration.

Permit 17798

The NWFSC is seeking a five-year research permit to annually take juvenile PS Chinook salmon and PS steelhead. The NWFSC research may also cause them to take adult S eulachon—a species for which there are currently no ESA take prohibitions. The surveys would occur in biologically and chemically contaminated estuaries throughout Puget Sound (Skagit, Stillaguamish, Puyallup, Nisqually, Duwamish, Snohomish, and Deschutes river estuaries). The purpose of these surveys is to monitor chemicals of emerging concern (CEC) using molecular and physiological approaches that would identify bio-accumulative CEC in ecologically sensitive indicator species and determine the impacts of CEC exposure may be having on endocrine function and growth. The researchers would use whole genome and molecular techniques on various Chinook tissues to help identify gene pathways and develop robust diagnostic indices for CEC toxicity. The NWFSC proposes to capture and euthanize the fish so they can take blood, tissue, and organ samples for analyses. Excess Chinook (and all other species) would be release immediately after capture. The researchers would prioritize using adipose-fin-clipped hatchery fish and unintentional mortalities over unclipped or wild fish. The research would benefit the listed species by identifying CEC sites and sources and thereby helping inform decisions about how to best handle them in the future.

Permit 17839

The USFS is seeking a five-year research permit to annually take juvenile PS Chinook salmon and PS steelhead. The researchers would conduct Salish sucker surveys in the northern Puget Sound river drainages of the Nooksack, Skagit, and Stillaguamish rivers. Their purpose is to: (1) Improve our knowledge about Salish sucker distribution by sampling preferential habitat types throughout their range in Northern Puget Sound and (2) refining our understanding of the species' physical chemical habitat metrics. In the U.S., the Salish Sucker, endemic to five watersheds in Washington State, is not federally listed under the ESA. In Canada, the Salish sucker has been listed as endangered since 1987 under the Species At Risk Act (SARA). The USFS proposes to capture fish using minnow and feddes traps. Salmonids encountered would be identified by species, checked for an adipose fin clip, and immediately released downstream. The research would benefit the listed species by providing information on their distribution. The main benefactor of this research is the Salish sucker who are listed as endangered in Canada but not well understood in the U.S. For Salish suckers, this study would improve distribution knowledge, confirm critical physical habitat characteristics, quantify presence/absence in suitable habitat, confirm species persistence in known populations, and refine migratory life history by investigating the upper drainages. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 17851

The Coastal Watershed Institute (CWI) is seeking a five-year research permit to annually take juvenile PS Chinook salmon, PS steelhead, and HCS chum salmon. The CWI research may also cause them to take adult S eulachon—a species for which there are currently no ESA take prohibitions. The survey would take place in the Elwha River estuary. The purpose of the research is to examine ecological function in the Elwha River nearshore environment with respect to determining how that environment supports fish species. The researchers would look at the population structures, migration timing, and life history strategies among local salmonids (Chinook, chum, sea-run cutthroat, steelhead, and bull trout) and measure ecological indices as well. The CWI proposes to capture fish using a beach seine. All fish would be identified by their lowest taxonomic level. Twenty individuals from each species would be measured and released. Salmonids would be scanned for fin clips and tags. The research would benefit listed species by generating information on the species' habitat needs and response to the removal of the Elwha and Glines Canyon dams. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

Permit 18001

Pierce County, Washington, is seeking a five-year research permit to annually take juvenile and adult PS Chinook salmon and PS steelhead. The purpose of these surveys is to determine the distribution and diversity of anadromous fish species in water bodies adjacent to and within the county's levee system. The County proposes to capture fish using seines, dip-netting, minnow traps, fyke nets, hook and line, and backpack electrofishing. Electrofishing would largely be "spot-shocking" for presence and absence and would not typically cover broad, continuous areas. The fish would be captured, identified, measured, and then released at or near their capture site. Fish would not be removed from the water unless absolutely necessary. The research would benefit the listed species by helping Pierce County develop a best management practice program and establish in-water work windows that would minimize effects on listed fish during construction and restoration projects. The researchers do not intend to kill any listed fish, but some may die as an inadvertent result of the research.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: April 22, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–09803 Filed 4–24–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, May 3, 2013.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–09847 Filed 4–23–13; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, May 17, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–09849 Filed 4–23–13; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, May 31, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–09851 Filed 4–23–13; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, May 24, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–09850 Filed 4–23–13; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, May 10, 2013.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, 202–418–5516.

Natise Stowe,

Executive Assistant.

[FR Doc. 2013–09848 Filed 4–23–13; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0036]

Electronic Fund Transfers; Determination of Effect on State Laws (Maine and Tennessee)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of preemption determination.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final determination as to whether certain laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by the Electronic Fund Transfer Act and Regulation E. The Bureau has determined that it has no basis for concluding that the provisions at issue in Maine's unclaimed property law relating to gift cards are inconsistent with, or therefore preempted by, Federal law. As discussed below, however, the Bureau has determined that one provision in Tennessee's unclaimed property law relating to gift cards is inconsistent with, and therefore preempted by, Federal law.

DATES: The determination is effective April 25, 2013.

FOR FURTHER INFORMATION CONTACT: Courtney Jean or Terry Randall, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), as amended by the Credit Card Accountability and Responsibility and Disclosure Act of 2009, and as implemented by the Bureau's Regulation E, provides that the Bureau shall make a preemption determination upon its own motion, or upon the request of any State, financial institution, or other interested party, as to whether any inconsistency exists between the EFTA and State law "relating to," among other things, "expiration dates of gift certificates, store gift cards, or general-use prepaid cards."[1] The EFTA preempts such a State law only to the extent of any inconsistency.[2] Furthermore, a State law is not considered inconsistent with the EFTA if the State law affords consumers greater protection than the EFTA.[3] Regulation E specifies that State law is inconsistent with the requirements of the EFTA and Regulation E if, among other things, the State law "*requires or permits* a practice or act prohibited by the federal law."[4]

The Bureau received three requests for determinations as to whether provisions in the EFTA and Regulation E (referred to hereinafter simply as "Federal law") relating to gift card expiration dates preempt certain unclaimed property law provisions in Maine, Tennessee, and New Jersey relating to gift cards.[5] The Bureau published a notice of intent to make a

[1] 15 U.S.C. 1693q; 12 CFR 1005.12(b).

[2] 15 U.S.C. 1693q.

[3] *Id.*

[4] 12 CFR 1005.12(b) (emphasis added).

[5] The requests relating to New Jersey's and Tennessee's laws came from payment card industry representatives. Maine's Office of the State Treasurer submitted a request relating to Maine's law to the Board of Governors of the Federal Reserve System. The Board did not respond to Maine's request before the Board's powers and duties relating to consumer financial protection functions transferred to the Bureau on July 21, 2011. The Bureau thus inherited responsibility for responding to Maine's pending request. The Maine, Tennessee, and New Jersey requests are available for public inspection and copying, consistent with the Bureau's rules on disclosure of records and information. *See* 12 CFR part 1070.

preemption determination (the Notice) seeking public comment on the Maine and Tennessee requests on August 21, 2012.[6] As stated in the Notice, the Bureau's view is that the New Jersey request has been rendered moot by a subsequent change in State law, and the Bureau therefore is not issuing a response.[7] The Bureau has reviewed the public comments received concerning Maine's and Tennessee's laws in response to the Notice and has conducted additional outreach to inform its analysis. The Bureau is now publishing a final determination that it has no basis for concluding that the provisions at issue in Maine's Uniform Unclaimed Property Act (the Maine Act) relating to gift cards are inconsistent with, or therefore preempted by, the EFTA or Regulation E. As discussed below, however, the Bureau finds that one provision in Tennessee's unclaimed property law, § 66–29–116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act (the Tennessee Act), when applied to gift cards, is inconsistent with the EFTA and Regulation E and therefore is preempted.

II. The EFTA and Regulation E

Regulation E, which implements the EFTA, generally prohibits any person from selling or issuing a gift certificate, store gift card, or general-use prepaid card with an expiration date unless certain conditions are met.[8] First, the person must have established policies and procedures to ensure that consumers have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expires.[9] Second, the expiration date for the underlying funds must be at least the later of (i) five years after the date the certificate or card was issued (or, in the case of a reloadable card, five years after the date that funds were last loaded onto the card) or (ii) the card's expiration date, if any.[10] Third, the terms of expiration (including whether, and if so when, the underlying funds expire) must be disclosed on the card, along with certain other information.[11] Finally, no fee or charge may be imposed on the cardholder for replacing the gift certificate or card prior to the funds' expiration date, unless the certificate or card has been lost or stolen.[12]

The EFTA and Regulation E generally define a gift certificate, store gift card, and general-use prepaid card to mean a card, code, or other device that, in exchange for payment, is issued to a consumer in a specified amount primarily for personal, family, or household purposes, and that is redeemable upon presentation for goods or services.[13] In some cases, the amount on store gift cards or general-use prepaid cards (but not on gift certificates) may be increased or reloaded.[14] Certain categories of devices—notably gift certificates that are issued in paper form only and reloadable cards that are not marketed or labeled as gift cards or gift certificates—are not treated as gift certificates, store gift cards, or general-use prepaid cards for purposes of the EFTA or Regulation E.[15] For ease of reference, the gift certificates, store gift cards, and general-use prepaid cards covered by the expiration date provisions of the EFTA and Regulation E are referred to herein as "gift cards."

III. Overview of States' Unclaimed Property Laws as Applied to Gift Cards

States' unclaimed property laws set forth specific periods of time after which particular categories of unclaimed personal property are deemed "abandoned" and custody of such property must be transferred from the entity holding the property to the State.[16] In some States, gift certificates or cards ("gift cards") are one such category of property. The categories of gift cards covered by States' unclaimed property laws vary depending on the State, as does the length of time that a gift card must remain unclaimed before being deemed abandoned. As discussed in detail in Part V of this determination, both the Maine and Tennessee Acts deem certain categories of gift cards that are subject to the expiration-date provisions of the EFTA and Regulation E to be abandoned property as early as two years after purchase. Once a gift card has been deemed abandoned, some or all of the unused value on the card then must be transferred to the State, pursuant to procedures that, once again, vary by State.[17]

According to rules of priority articulated by the Supreme Court, unclaimed intangible property (*i.e.*, including the unused value on gift cards) is presumptively subject to being transferred to the State of the last known address of the property owner. If that State does not provide for the transfer of the category of property at issue, or if the property owner's address is unknown, then custody is due to be transferred to the State of incorporation of the entity that is obligated to make payment on the property.[18] The Bureau understands that for gift cards, the address of the owner (*i.e.*, the recipient) typically is unknown, and the entity obligated to make payment on the property typically is the entity that issued the gift card.[19]

When unused gift card value transfers to a State, the State takes custody of the property on behalf of the gift card owner. If the gift card owner thereafter seeks to use the card, State law typically

[6] 77 FR 50404.

[7] The New Jersey request sought a determination as to whether Federal law preempted the application to gift cards of New Jersey's unclaimed property law, which deemed gift cards abandoned after two years of nonuse. On June 29, 2012, however, New Jersey amended its unclaimed property law to lengthen the period of nonuse after which a gift card would be presumed abandoned from two years to five years. In response to the Notice, certain commenters urged the Bureau to issue a determination with respect to New Jersey notwithstanding the intervening amendment to State law. However, the Bureau continues to view the original request as moot and therefore is not issuing a response.

[8] 15 U.S.C. 1693*l*–1(c); 12 CFR 1005.20(e).

[9] 12 CFR 1005.20(e)(1).

[10] 12 CFR 1005.20(e)(2).

[11] 12 CFR 1005.20(e)(3).

[12] 12 CFR 1005.20(e)(4). Thus, for example, a consumer may not be charged a fee to replace an expired card if the funds underlying that card have not yet expired.

[13] 15 U.S.C. 1693*l*–1(a)(2); 12 CFR 1005.20(a). Specifically, gift certificates and store gift cards are redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services. 15 U.S.C. 1693*l*–1(a)(2)(B)–(C); 12 CFR 1005.20(a)(1)–(2). General-use prepaid cards are redeemable upon presentation at multiple, unaffiliated merchants or may be used at automated teller machines. 15 U.S.C. 1693*l*–1(a)(2)(A); 12 CFR 1005.20(a)(3).

[14] 15 U.S.C. 1693*l*–1(a)(2); 12 CFR 1005.20(a).

[15] *See* 15 U.S.C. 1693*l*–1(a)(2)(D); 12 CFR 1005.20(b). The other categories of excluded devices are those useable solely for telephone services; loyalty, award, or promotional gift cards; cards not marketed to the general public; and cards redeemable solely for admissions to events or venues. *See id.*

[16] Unclaimed property laws refer to the person or entity that transfers unclaimed property to the State as the "holder." In general, the "holder" is the person that is in possession of the property, or that is indebted or required to make payment to the owner of the property. *See, e.g.*, 33 M.R.S. § 1952.6 (2011); Tenn. Code Ann. § 47–18–127(e) (2012).

[17] States' unclaimed property laws generally provide that the abandoned property is the gift card itself. However, the physical gift card is not transferred to the State because, at the time of abandonment, the gift card is not in the issuer's possession. Instead, the unused value on the card is transferred. Some states require transfer of the entire unused value, while others require transfer of only a portion (*e.g.*, 60 percent) of the unused value. For ease of reference, the Bureau herein characterizes the property that is being transferred to the State as the "unused gift card value."

[18] *See Delaware* v. *New York*, 507 U.S. 490 (1993).

[19] In some circumstances, some other entity might be the "holder" of a gift card for purposes of State unclaimed property law; however, for ease of reference herein the Bureau refers to the gift card issuer as the holder. The Bureau's determinations with respect to the Maine and Tennessee Acts do not depend on what entity is the holder of a gift card.

permits—but does not necessarily require—the gift card issuer to honor the card and to seek reimbursement from the State. If the gift card issuer opts not to honor the card, the gift card owner can contact the State to attempt to reclaim the property.

The Bureau believed at the time that it issued the Notice that both the Maine and Tennessee Acts fit the general model described above. The Bureau subsequently received information indicating that the Maine Act in fact requires gift card issuers to honor gift cards indefinitely, even after the unused gift card value is transferred to the State. Details concerning the Maine and Tennessee Acts as applied to gift cards, including where they differ from the general approach set forth above, are discussed in Part V.

IV. Summary of Comments

The Bureau solicited public comment on all aspects of its Notice, including on the application of the Maine and Tennessee Acts to gift cards, on the nature of any inconsistency between those laws and the expiration date provisions of the EFTA and Regulation E, and in particular on whether either of the Acts affords consumers greater protection than Federal law. The Bureau received 20 comments in response to the Notice, including two comments from consumer advocacy groups and 18 comments from gift card issuers and trade associations. All of the commenters stated that the Maine and Tennessee Acts as applied to gift cards conflict with Federal law, that they are not more protective of consumers, and that the Bureau should determine that they are preempted.[20] In general, commenters did not distinguish between the specifics of the Maine and Tennessee Acts. The comments thus are summarized in a general manner below.

A. Whether State Law Conflicts With Federal Law

In general, industry commenters stated that the Maine and Tennessee Acts as applied to gift cards conflict with the expiration date provisions of the EFTA and Regulation E. They also discussed the burdens of complying with both State and Federal law.

Most industry commenters stated that any requirement to transfer the unused value on a gift card to a State as soon as two years after card issuance conflicts with Federal law because it imposes inconsistent requirements on card issuers. The commenters noted that Federal law prohibits a person from selling or issuing a gift card with an expiration date unless the card and its underlying funds will not expire for a minimum of five years. However, pursuant to both the Maine and Tennessee Acts, issuers must transfer unused gift cards' value (*i.e.*, the underlying funds) to the State as soon as two years after issuance. The commenters stated that the Maine and Tennessee Acts and Federal law thus impose conflicting obligations on issuers to continue to honor gift cards when they have already transferred the gift card value to the State.

Other industry commenters noted that the States' gift card abandonment periods can act as *de facto* expiration dates, because consumers are unlikely to recover their property if the issuer opts not to honor the gift cards after transferring their unused value to the State. Similarly, several industry commenters noted that Maine's and Tennessee's abandonment periods conflict with Federal disclosure requirements for gift cards, which provide that any expiration date must printed on the card (*i.e.*, if no expiration date is printed, then the card cannot expire). The commenters stated that, because the Maine and Tennessee Acts require gift card issuers to transfer unused gift cards' value to the State before any disclosed expiration date, the Acts have the potential to create an undisclosed, *de facto* expiration date that conflicts with what is printed on the card.

In light of these arguments, industry commenters urged the Bureau to determine that the EFTA and Regulation E preempt the Maine and Tennessee Acts insofar as those Acts require transfer of unused gift cards' value sooner than the expiration date that Federal law would permit (*i.e.*, a minimum of five years or a card's expiration date, if any). Some industry commenters stated that compelling issuers to comply with both the Federal expiration date provisions and the Maine and Tennessee Acts subjects issuers to conflicting claims from States and consumers. These commenters stated that requiring issuers to honor cards and then seek reimbursement from the State raises constitutional due process concerns. Other commenters stated that it is impossible for issuers subject to the Maine or Tennessee Acts to comply with both Federal and State law as they currently exist, or that complying with both laws imposes a significant and unfair burden on issuers and could cause issuers to charge higher fees or offer fewer card types.[21] A few commenters noted that compelling issuers to comply with both Federal and State laws could lead to inappropriate windfalls to States. One trade association, on the other hand, stated that requiring issuers to honor abandoned cards would not significantly increase the burden on issuers, because the majority of issuers currently honor gift cards to preserve customer relationships, even if the cards' unused value has been turned over to a State.

One commenter, a consumer group, identified a different kind of conflict between Federal and State law. This commenter stated that an inconsistency arises from the issuer's option to decline to honor the card before the card may expire under Federal law. The commenter thus urged the Bureau to determine that the EFTA and Regulation E preempt State law, but only insofar as State law purports to allow issuers to decline to honor cards sooner than the cards are permitted to expire under Federal law. The commenter noted that, under this approach, consumers would receive both the full protection of Federal law and whatever benefits might flow from having their unused gift cards' value transfer to the State. The commenter further stated that it would be less burdensome for issuers to request reimbursement from the State after transferring the unused value than it would be for consumers to retrieve their unclaimed property directly from the State. The commenter reasoned that issuers could request reimbursement at regular intervals, *e.g.* annually, and that issuers would have little difficulty establishing their right to reimbursement.

B. Whether State Law Is More Protective of Consumers

Under the EFTA, even if there is a conflict between State law and the EFTA and Regulation E, State law is not inconsistent with the Federal law for purposes of a preemption analysis if it offers greater protections to consumers than the EFTA.[22] However, no commenters argued that the Maine and Tennessee Acts are more protective of consumers than Federal law. Most commenters argued that Federal law is more protective of consumers than the Maine and Tennessee Acts, and two commenters stated that Maine law is

[20] All but two of the commenters interpreted the Maine Act, as the Bureau did in its Notice, to permit issuers to decline to honor abandoned gift cards. Thus, the bulk of the comments did not factor into their analysis of Maine law a provision of the Maine Act that requires an issuer to continue to honor gift cards even after the issuer has transferred their unused value to the State. *See* Part V.

[21] As noted above, most commenters appeared not to realize that the Maine Act itself requires issuers to honor gift cards even after transferring their unused value to the State.

[22] 15 U.S.C. 1693q.

equally protective of consumers as Federal law.

Those commenters who stated that Federal law is more protective of consumers cited the fact that, under Federal law, consumers are guaranteed the ability to redeem their gift cards at the point-of-sale for at least three years longer than under State law.[23] Both consumer group commenters, however, stated that whether Federal law is more protective depends on whether State law requires issuers to honor cards for the entire period required by Federal law. Similarly, the two commenters, both trade associations, who stated that Maine law is equally protective of consumers, reached that conclusion because, they said, Maine law prohibits expiration dates for gift cards. Thus, according to these commenters, under Maine law, gift cards must be honored by the retailer whenever presented, even if their unused value has already transferred to the State.

Commenters unanimously agreed that a State law that would force consumers to retrieve their unused gift cards' value from the State, rather than from the issuers, would be less protective than Federal law. The commenters believed that consumers would not often succeed in reclaiming their property (or would not even try), due to the lengthy and confusing process that they would need to navigate. For example, commenters stated that a consumer would need to (1) know that a card had been deemed abandoned and that the issuer had transferred the unused card value to a State, (2) identify the State that is holding the property, which is based on information not usually known to consumers (*e.g.*, information reported to the State by the issuer and the issuer's State of incorporation), and (3) establish ownership of the property, which could be difficult because gift card owners typically are unknown to the issuer and thus not reported to the State.

The Notice solicited comment on whether gift cards' unused value would be better protected in the custody of the State where, for example, the unused value potentially could be protected from inactivity fees, issuer bankruptcy, and expiration, or could be converted to cash for the consumer. No commenters believed that any such benefits (even assuming they occurred) would outweigh the protections provided to consumers by Federal law. Certain industry commenters noted that the potential for harm to consumers from inactivity fees or issuer bankruptcy is low because inactivity fees are rare, the risk of bankruptcy is remote, and consumers have other protections against such harms. Other commenters disputed that a two-year abandonment period benefits consumers by providing them the indefinite ability to retrieve their gift cards' unused value from the State. These commenters noted the procedural challenges discussed above. They also stated that consumers would receive the same benefit (if any) if the cards' value transferred to the State after five years of dormancy. Two issuers commented that the right to receive cash is not more protective of consumers because consumers expect to obtain merchandise, not cash, from the purchase of gift cards.

A handful of commenters urged the Bureau to determine that the EFTA and Regulation E preempt *any* State unclaimed property law pursuant to which a gift card is presumed abandoned any earlier than the earliest possible expiration permissible under Federal law. These commenters cited the benefits of a uniform, national approach. For example, one issuer stated that uniform, national standards promote stability in the financial system and protect consumers and industry from the compliance costs associated with State-by-State regulation. One trade association added that uniform, national standards reduce confusion, especially because many issuers may also be subject to other Federal regulations.

V. Final Determinations

Maine. The Office of the State Treasurer of the State of Maine requested a determination as to whether and how the EFTA and Regulation E's provisions relating to gift card expiration dates preempt the Maine Act as applied to gift cards. After considering the relevant provisions of the EFTA and Regulation E, the Maine Act, public comments received, and further analysis, the Bureau has determined that it has no basis for concluding that the Maine Act as applied to gift cards is inconsistent with the EFTA and Regulation E or, therefore, that it is preempted.

Several provisions of the Maine Act are relevant to understanding the treatment of gift cards as abandoned property in Maine. First, § 1953 of the Maine Act provides that a gift obligation or stored-value card is presumed abandoned two years after the later of December 31 of the year in which the obligation arose or the most recent transaction involving the obligation or stored-value card occurred, including the initial issuance and any subsequent addition of value to the obligation or stored-value card.[24] (For ease of reference, the gift obligations covered by the Maine Act are referred to herein as "gift cards.") Section 1953 of the Maine Act further provides that a period of limitation may not be imposed on an owner's right to redeem a gift card.[25] Under § 1958, holders of property that Maine presumes to be abandoned as of the end of a calendar year must report and transfer the property to Maine by May 1 of the following year.[26] Finally, § 1961 provides that Maine thereafter assumes custody of and responsibility for the property, and a business that has transferred such property to the State is relieved of all liability arising thereafter with respect it.[27] Section 1961 further states that if a business chooses to make payment to the owner of the property, it may request reimbursement by filing a request with the State.[28]

The Bureau's determination with respect to the Maine Act relies on the Bureau's communications with the Office of the State Treasurer for the State of Maine, which interprets and administers Maine's unclaimed property law. Maine's Office of the State Treasurer has advised the Bureau that, properly interpreted, the Maine Act requires a holder to continue to honor a gift card that has been presumed abandoned pursuant to the Act. The Treasurer similarly has explained that Maine does not fulfill consumers' direct requests to claim their property. Instead, if a consumer is directed to the State, the State re-directs the consumer to the gift card issuer and informs the issuer of its obligation to honor the card. There is some apparent tension between an issuer's continuing obligation under § 1953 of the Maine Act to honor abandoned gift cards whose unused

[23] As noted, all but two commenters interpreted the Maine Act, as the Bureau did in its Notice, to permit issuers to decline to honor gift cards after transferring the cards' unused value to the State.

[24] 33 M.R.S. § 1953.G(2) (2011). The terms "gift obligation" and "stored value card" are defined in detail in the Maine Act and may differ in some respects from the terms "gift certificates, store gift cards, or general-use prepaid cards" as used in the EFTA. *Id.* § 1952.5–A (gift obligation); § 1952.15–A (stored-value card). Under the Maine Act, "prefunded bank cards," which generally include cards issued by a financial organization and that are usable at multiple merchants, are deemed abandoned after three years of non-use. *Id.* § 1952.12–A; § 1953.G–1.

[25] *Id.* § 1953.G(3) ("A period of limitation may not be imposed on the owner's right to redeem the gift obligation or stored-value card.").

[26] *Id.* § 1958. Under the Maine Act, only 60 percent of a gift card's face value is reportable as unclaimed property. *Id.* § 1953.G(1). In addition, a gift card sold on or after December 31, 2011, is not presumed abandoned if it was among those sold by an issuer that sold no more than $250,000 in gift cards during the preceding calendar year. *Id.* § 1953.G(2).

[27] *Id.* § 1961.2.

[28] *Id.*

value has transferred to the State, and the more general provision in § 1961 that provides abandoned property holders the option of whether to make payment to property owners after the property has transferred to the State. However, the Bureau's determination with regard to the Maine Act is based on the interpretation of Maine law that the Treasurer has presented.

Thus, under the Maine Act, as explained by the State's Treasurer, an issuer that has transferred the unused value on an abandoned gift card to the State must honor the gift card on presentation indefinitely, and may then request reimbursement from the State. Because the Maine Act does not interfere with consumers' ability to use their gift cards at the point-of-sale for at least as long as they are guaranteed that right by the EFTA and Regulation E, the Bureau has determined that it has no basis for concluding that the provisions in Maine's unclaimed property law relating to gift cards are inconsistent with, or therefore preempted by, Federal law.[29]

In reaching its determination, the Bureau considered commenters' concerns about the burden of being required to comply both with the expiration date provision of the EFTA and the abandonment provisions of the Maine Act. The Bureau notes, however, that the Maine Act itself requires abandoned gift cards to be honored indefinitely, a fact that these commenters generally did not recognize. The Bureau also considered certain commenters' concerns that requiring an issuer to honor abandoned gift cards and then seek reimbursement, as the Maine Act does, would raise constitutional due process issues. The Bureau expresses no view on these comments, because the Bureau's role is limited to determining whether any provisions of the Maine Act as applied to gift cards are inconsistent with the EFTA, not whether Maine's law is constitutional.

Tennessee. Payment card industry representatives requested that the Bureau issue a preemption determination as to whether the Tennessee Act is inconsistent with the requirement under the EFTA and Regulation E that gift cards and their underlying funds not expire sooner than five years after the date on which funds are last loaded onto the card. After considering the relevant provisions of the EFTA and Regulation E, the Tennessee Act, public comments received, and further analysis, the Bureau has determined that one provision in Tennessee's unclaimed property law, § 66–29–116 of the Tennessee Act, as applied to gift cards, is inconsistent with the EFTA and Regulation E and therefore is preempted.

As with Maine, several provisions of the Tennessee Act are relevant to understanding the treatment of gift cards as abandoned property in Tennessee. First, the Tennessee Act provides that a "gift certificate" issued in the ordinary course of an issuer's business is presumed abandoned if it remains unclaimed by the owner upon the *earlier* of: (1) The expiration date of the certificate; or (2) two years from the date the certificate was issued.[30] Pursuant to Tennessee's Consumer Protection Act, the term "gift certificate" excludes prepaid cards usable at multiple, unaffiliated merchants or at automated teller machines (*i.e.*, "open-loop" gift cards).[31] In addition, a gift certificate is exempt from the Tennessee Act if the issuer of the certificate does not impose a dormancy charge and the gift certificate (1) conspicuously states that the gift certificate does not expire; (2) bears no expiration date; or (3) states that any expiration date is not applicable in Tennessee.[32] In short, the Bureau understands that the Tennessee Act requires issuers to transfer to the State the unused value on most closed-loop gift certificates that carry dormancy charges and may expire. The Bureau's determination applies to the Tennessee Act only to the extent that the gift certificates covered by the Act overlap with the categories of gift cards for which the EFTA and Regulation E restrict expiration dates. For ease of reference, such products are referred to herein as "gift cards."

An issuer of gift cards that Tennessee presumes to be abandoned as of the end of a calendar year must report and transfer the unused cards' value to Tennessee by May 1 of the following year.[33] Under § 66–29–116 of the Tennessee Act, Tennessee thereafter assumes custody and responsibility for the property, and the person that transferred the unused gift card value to the State is relieved of all liability to the extent of the value transferred for any claim that may later arise with respect to the property. Section 66–29–116 further provides that a person that has transferred gift cards' unused value to Tennessee may elect to honor the cards and may request reimbursement by filing a request with the State.

Thus, unlike the Maine Act, the Tennessee Act does not require issuers to honor abandoned gift cards after issuers have transferred the cards' unused value to Tennessee. The Bureau thus understands that, if an issuer were to decline to honor the gift cards, as permitted by § 66–29–116, consumers could attempt to reclaim their property by submitting an unclaimed property claim form to Tennessee's Department of Treasury. To properly submit an effective claim, consumers would need to determine that Tennessee is the appropriate State to contact and would need to establish ownership of the property by supplying sufficient documentation to the State. Consumers then most likely would need to wait at least several weeks to receive their property.[34]

The Bureau finds that § 66–29–116 of the Tennessee Act as applied to gift cards is inconsistent with the EFTA and Regulation E and therefore is preempted. Specifically, the Bureau finds that § 66–29–116 of the Tennessee Act is inconsistent with Federal law because, by permitting issuers to decline to honor gift cards as soon as two years after issuance and relieving them of

[29] As noted, the Bureau's determination with respect to the Maine Act reflects the Bureau's understanding of how the Maine Act currently operates and is based on communications with Maine's Office of the State Treasurer. If legislative, judicial, or other official action effected a relevant change in how Maine law applied to gift cards, the Bureau could revisit its determination.

[30] *Id.* § 66–29–135(a)(1)–(2). Because, pursuant to the EFTA and Regulation E, gift cards sold since August 2010 may not expire sooner than five years after they are issued, the Bureau understands that § 66–29–135 of the Tennessee Act effectively provides for a two-year abandonment period for such categories of cards.

[31] Pursuant to Tennessee's Consumer Protection Act, the term "gift certificate" also excludes prepaid telephone calling cards and certain other categories of cards not distributed to the general public. Tenn. Code Ann. § 47–18–127(d)–(e) (2012). Aside from the exclusion for "open-loop" gift cards and prepaid telephone calling cards, the Bureau believes that "gift certificate" for purposes of Tennessee law generally includes gift cards and other similar electronic devices. However, the scope of Tennessee's definition of "gift certificate" may differ in some respects from that of "gift card" as used elsewhere in this determination.

[32] *Id.* § 66–29–135(c).

[33] *Id.* § 66–29–113(e). The value presumed abandoned is the price paid by the purchaser, except that for gift certificates issued after December 31, 1996, and redeemable in merchandise only, the value presumed abandoned is 60 percent of the purchase price. *Id.* § 66–29–135(b). The Bureau notes that a Tennessee trial court held in 2001 that Tennessee law requires transfer only of the right to claim merchandise by using the gift card (*i.e.*, not a transfer of the unused value). *Service Merchandise Co.* v. *Adams*, No. 97–2782–III, 2001 WL 34384462 (Tenn. Ch. Ct. June 29, 2001). However, the Tennessee Department of Treasury's Unclaimed Property Division has informed the Bureau that Tennessee requires the transfer of the unused value.

[34] *See* Tennessee Department of Treasury Unclaimed Property, Frequently Asked Questions. *http://treasury.tn.gov/unlcaim/faq/html.*

liability to consumers for the property, the effect of this provision is to permit cards and their underlying funds to expire sooner than is permitted under the EFTA and Regulation E. Section 66–29–116 of the Tennessee Act thus permits an act or practice that is prohibited by the Federal law.

In reaching this conclusion, the Bureau has considered whether § 66–29–116 of the Tennessee Act, as applied to gift cards, is more protective of consumers than Federal law. The Bureau has concluded that it is not, because the Bureau has not identified any consumer benefit flowing from an issuer's ability to decline a gift card at the point-of-sale sooner than the card and its underlying funds are permitted to expire under Federal law. The Bureau notes that any benefits a consumer might experience from having a gift card treated as abandoned property would result from the transfer of the unused gift card value to the State, not from an issuer's declining to honor the card.[35]

For the reasons stated above, the Bureau finds that the Tennessee Act is inconsistent with the EFTA and Regulation E and therefore is preempted to the extent that it permits issuers to refuse to honor gift cards sooner than the gift cards and their underlying funds are permitted to expire under Federal law.[36] In reaching this determination, the Bureau acknowledges commenters' concerns that the requirement both to transfer the unused value from abandoned gift cards to the State while at the same time complying with the EFTA and Regulation E imposes possibly burdensome obligations on gift card issuers. However, the primary concern of the relevant provision of the EFTA is to ensure that consumers will be able to use their gift cards for the prescribed periods of time. So long as consumers can continue to use their cards at the point-of-sale for as long as Federal law guarantees, the fact that issuers may face an increased burden or cost to comply with both Federal law and the Tennessee Act—at least to the degree of burden the commenters discussed—does not change the Bureau's conclusion. Also, as with Maine, the Bureau expresses no opinion on the constitutional due process concerns raised by certain commenters, because the Bureau's role is solely to determine whether State law inconsistent with the requirements of the EFTA and Regulation E, not to determine whether State law is constitutional. In this regard, the Bureau notes that its determination is limited to the conclusion that § 66–29–116 of the Tennessee Act, as applied to gift cards, is preempted, and the Bureau does not otherwise opine on how the Tennessee Act should apply to gift cards in light of this determination.

This is an official staff interpretation of Regulation E, issued pursuant to § 1005.12(b) of Regulation E. The Bureau believes that the nuances of States' unclaimed property laws warrant independent consideration of whether a particular State's unclaimed property law as applied to gift cards is inconsistent with and preempted by the EFTA and Regulation E. Thus, notwithstanding certain commenters' requests that the Bureau set forth a uniform, national standard, this determination is limited to the facts and issues discussed above and does not constitute a determination with respect to the laws of any other States.

List of Subjects

12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Preemption Determination

The following order sets forth the preemption determination, which also will be reflected in Supplement I to Part 1005—Official Interpretations.

Order

Pursuant to § 1639q of the Electronic Fund Transfers Act (EFTA) and § 1005.12(b) of Regulation E, the Bureau has determined that § 66–29–116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act (the Tennessee Act) is preempted by the EFTA and Regulation E to the extent that the Tennessee Act permits gift certificates to be declined at the point-of-sale sooner than the gift certificates and their underlying funds are permitted to expire under § 1005.20(e) of Regulation E. The Bureau's determination applies only with respect to those devices that are gift certificates, store gift cards, and stored-value cards, as defined in 12 CFR 1005.20(a), and are also covered by the Tennessee Act.

Dated: April 19, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–09751 Filed 4–24–13; 8:45 am]

BILLING CODE 4810–AM–P

[35] Similarly, the Bureau concludes that its determination that § 66–29–116 of the Tennessee Act is not more protective of consumers than the EFTA and Regulation is not inconsistent with the judicial decision discussed in the Bureau's Notice. That case, in which the U.S. Court of Appeals for the Third Circuit upheld a decision by the U.S. District Court for the District of New Jersey that declined to preliminarily enjoin the application to gift cards of New Jersey's unclaimed property law, weighed the benefits to consumers of New Jersey's unclaimed property scheme for gift cards. In finding that the plaintiffs were unlikely to prove that Federal law preempted New Jersey's unclaimed gift card law, the court emphasized several possible benefits to consumers of having their unused gift card value transfer to the State that, in the court's view, weighed in favor of a conclusion that New Jersey law was more protective of consumers than the EFTA and Regulation E. *See N.J. Retail Merchants Ass'n* v. *Sidamon-Eristoff*, 669 F.3d 374 (3d Cir. 2012), *reh'g denied* (3d Cir. Feb. 24, 2012). Because the Bureau's preemption determination with respect to Tennessee law applies to the provision of Tennessee law that permits issuers to decline to honor abandoned gift cards at the point-of-sale, rather than to the provision that requires unused gift card value to be transferred to the State, the purported benefits of any such transfer are not germane to the Bureau's decision.

[36] The Bureau's determination with respect to the Tennessee Act reflects the Bureau's understanding of how the Tennessee Act currently operates and is based in part on communications with the Tennessee Department of Treasury's Unclaimed Property Division. If legislative, judicial, or other official action effected a relevant change in how Tennessee law applied to gift cards, the Bureau could revisit its determination.

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, May 1, 2013, 10:00 a.m.–11:00 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Decisional Matter: Section 1110 Certificates of Compliance—Notice of Proposed Rulemaking.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: April 23, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–09925 Filed 4–23–13; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0089]

Proposed Collection; Comment Request

AGENCY: Defense Technical Information Center (DTIC), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Defense Technical Information Center (DTIC) announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 June 24, 2013.

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, 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

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 Technical Information Center (DTIC), Marketing and Registration Division, 8725 John J. Kingman Road, Suite 0944, ATTN: Ms. Angela Davis, Ft. Belvoir, VA 22060–6218, or call the DTIC Marketing and Registration Division at (703) 767–8207.

Title; Associated Form; and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Control Number 0704–0403.

Needs and Uses: The information collection requirement is necessary to assess the level of service the DTIC provides to its current customers. The surveys will provide information on the level of overall customer satisfaction as well as on customer satisfaction with several attributes of service that impact the level of overall satisfaction. These customer satisfaction surveys are required to implement Executive Order 12862, "Setting Customer Service Standards." Respondents are DTIC registered users who are components of the DoD, military services, other Federal Government Agencies, U.S. Government contractors, and universities involved in federally funded research. The information obtained by these surveys will be used to assist agency senior management in determining agency business policies and processes that should be selected for examination, modification, and reengineering from the customer's perspective. These surveys will also provide statistical and demographic basis for the design of follow-on surveys. Future surveys will be used to assist monitoring of changes in the level of customer satisfaction over time.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 810.

Number of Respondents: 12,150.

Responses per Respondent: 1.

Average Burden per Response: 4 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of these surveys is to assess the level of service DTIC provides to its current customers. The surveys will provide information on the level of overall customer satisfaction and on customer satisfaction with several attributes of service which impact the level of overall satisfaction. The objectives of the survey are to help DTIC (1) gauge the level of satisfaction among users and (2) identify possible areas for improving our products and services. The surveys are designed to assist in evaluating the following knowledge objectives:

- To improve customer retention;
- To determine the perceived quality of products, service, and customer care;
- To indicate trends in products, services, and customer care;
- To benchmark DTIC's customer satisfaction results with other Federal government agencies.

Dated: April 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–09755 Filed 4–24–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0059]

Agency Information Collection Activities; Comment Request; Evaluation and Accountability Report for Title II, Part D (Ed Tech) of ESEA

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0059 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C.

3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation and Accountability Report for Title II, Part D (Ed Tech) of ESEA.

OMB Control Number: 1810–0702.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 53.

Total Estimated Number of Annual Burden Hours: 1,590.

Abstract: Sections 2402(a)(7) and 2413(b)(4) of ESEA require States and local educational agencies (LEAs) that receive Title II, Part D grant funds to conduct rigorous evaluation of the effectiveness of Title II, Part D formula and competitive grant-funded projects, activities and strategies in integrating technology into curricula and instruction and improving student achievement. The purpose of this reporting requirement is to identify from the results of those evaluations innovative projects, activities and strategies that effectively infuse technology with curriculum and instruction, show evidence of positive impacts for student learning, and can be widely replicated by other State educational agencies and LEAs.

Dated: April 19, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–09794 Filed 4–24–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0060]

Agency Information Collection Activities; Comment Request; Promoting Student Success in Algebra I Project

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0060 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105 Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Promoting Student Success in Algebra I Project.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 201.

Total Estimated Number of Annual Burden Hours: 208.

Abstract: The Promoting Student Success in Algebra I (PSSA) study aims to provide policy-makers and practitioners with a deeper understanding of how instructional practices, professional development, instructional coaching, curriculum alignment, and expanded learning/double-dose algebra can serve as possible avenues for improving student success in mathematics and particularly Algebra I, a critical gateway course for which student success is a strong predictor of high-school graduation.

The PSSA study will incorporate research findings, school-based perspectives from education practitioners, and case studies of district and school sites that are implementing exemplary initiatives in the five topical areas that represent common leverage points for addressing student needs in mathematics. This work will make an important contribution by producing actionable information for educators and policymakers about how to promote success in Algebra I for all students while simultaneously increasing the demands on teacher effectiveness and student performance in preparation for the Common Core State Standards for Mathematics (CCSSM). The study centers around three major research questions as follows:

(1) What is the evidence to support practices or strategies in the areas of instructional practices, professional development, instructional coaching,

curricular alignment, and expanded learning/double-dose algebra for promoting student success in Algebra I?

(2) What do district- and school-based representatives think about evidence for practices or strategies in these areas?

(3) What does exemplary implementation of each practice or strategy look like in districts or schools with demonstrated improvement in student outcomes?

The subject of this OMB clearance request is PSSA's series of five topical area case studies (Research Question #3). The case studies are designed to address five focused sets of case study research questions that are grounded in the studys overall conceptual framework. These research questions explore factors associated with the successful implementation of programs or initiatives in each of the five topical areas, including (a) actions taken to implement the program/initiative; (b) processes used to develop and select the program/initiative; (c) contextual factors that enable and constrain successful implementation; and (d) indicators that are used to describe the effectiveness of the program/initiative.

Dated: April 19, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–09787 Filed 4–24–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0058]

Agency Information Collection Activities; Comment Request; Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109–270) State Plan Guide

AGENCY: Office of Vocational and Adult Education (OVAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0058 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109–270) State Plan Guide.

OMB Control Number: 1830–0029.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 2,052.

Abstract: The Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109–270) State Plan Guide requires eligible State agencies to submit a 6-year plan, with annual revisions as the eligible agency deems necessary in order to receive Federal funds. The Office of Vocational and Adult Education/Division of Academic and Technical Education program staff review the submitted state plans for compliance and quality.

Dated: April 19, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–09800 Filed 4–24–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Perkins Loan Program Regulations

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 28, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0012 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general

public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins Loan Program Regulations.

OMB Control Number: 1845–0023.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: Individuals or households, State, Local, or Tribal Governments, Private Sector.

Total Estimated Number of Annual Responses: 23,488,137.

Total Estimated Number of Annual Burden Hours: 607,752.

Abstract: Institutions of higher education make Perkins loans. Information is necessary in order to monitor a school's due diligence in its contact with the borrower regarding repayment, billing and collections, reimbursement to its Perkins loan revolving fund, rehabilitation of defaulted loans as well as institutions use of third party collections. This extension is a request for approval of reporting and record-keeping requirements contained in the regulations related to the administrative requirements of the Perkins Loan Program.

Dated: April 18, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–09791 Filed 4–24–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: Training and Information for Parents of Children with Disabilities—Parent Training and Information Centers Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.328M.

Dates:

Applications Available: April 25, 2013.

Deadline for Transmittal of Applications: June 10, 2013.

Deadline for Intergovernmental Review: August 8, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 671 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this is an absolute priority. Under 34 CFR 75.105(c)(3), for this competition, we consider only applications that meet this priority.

This priority is:

Parent Training and Information Centers.

Background:

Almost 35 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by strengthening the ability of parents to participate fully in the education of their children at school and at home (see section 601(c)(5)(B) of IDEA).

This notice announces a priority designed to help ensure that parents of children with disabilities have the training and information they need to participate in the education of their children.

Parent Training and Information Centers (PTIs) are designed to meet the needs of parents of children with disabilities living in the States, regions of the States, or territories served by the PTIs, particularly underserved parents and parents of children who may be inappropriately identified as having a disability. Under this priority, PTIs will, consistent with section 671 of IDEA, provide parents of children with disabilities with the training and information they need to enable them to participate cooperatively and effectively in helping their children to—

(a) Meet developmental and functional goals and the challenging academic achievement standards that have been established for all children; and

(b) Be prepared to lead productive independent adult lives, to the maximum extent possible.

The following Web site provides further information on the work of previously funded PTIs: *www.parentcenternetwork.org.*

Priority:

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements: An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *http://archive.tadnet.org/model_and_performance?format=html.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for attendance at the following:

(1) The three-day Leadership Conference in Washington, DC during each year of the project period.

(2) The two-day Regional Technical Assistance for Parent Centers Conference, in the region in which the PTI is located, during each year of the project period. Applicants should refer to *www.parentcenternetwork.org* for a list of regions; and

(e) A description specifying the special efforts the PTI will make to:

(1) Ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served, including parents of children attending high-poverty schools [1] and the State's persistently lowest-achieving schools,[2] are effectively met; and

(2) Work with community-based organizations, including those that work with low-income parents and parents of limited English proficient children.

Project Activities: To meet the requirements of this priority, the PTI, at a minimum, must—

(a) Maintain a Web site that contains, at a minimum, a current calendar of upcoming events, free informational publications for families, and links to webinars or other online multimedia resources. The Web site must also meet government or industry-recognized standards for accessibility. Applicants can find more information regarding Web site accessibility at: *http://webaim.org;*

(b) Provide training and information that meets the training and information needs of parents of children with disabilities living in the area served by the PTI, particularly underserved parents and parents of children who may be inappropriately identified as having a disability and including parents of children attending high-poverty schools and the State's persistently lowest-achieving schools;

(c) Serve the parents of infants, toddlers, and children from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA;

(d) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

(e) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(2) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(3) Participate in decision-making processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(4) Obtain appropriate information about the range, type, and quality of—

(i) Options, programs, services, technologies, practices, and interventions that are based on scientifically based research, to the extent practicable; and

(ii) Resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education's (OSEP's) technical assistance and dissemination centers (*www.tadnet.org*) and through communities of practice (*www.tadnet.org/communities*);

(5) Understand the requirements of IDEA related to the provision of education and early intervention services to children with disabilities;

(6) Participate in activities at the school level that benefit their children; and

(7) Participate in school reform activities;

(f) In States where the State elects to contract with the PTIs, contract with the State educational agency (SEA) to provide, consistent with subsections (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents to explain the mediation process;

(g) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution such as the mediation process described in section 615(e) of IDEA;

(h) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law);

(i) Assist parents to understand the availability of, and how to effectively use, procedural safeguards provided under IDEA, including the resolution session described in section 615(e);

(j) Assist parents in understanding, preparing for, and participating in, the resolution session described in section 615(f)(1)(B) of IDEA;

(k) Establish cooperative partnerships with any Community Parent Resource Centers (CPRCs) and any other PTIs funded in the State under sections 672 and 671 of IDEA, respectively;

(l) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 of IDEA and the Department's Institute of Education Sciences, and with other national, State, and local organizations and agencies such as protection and advocacy agencies that serve parents and families of children with the full range of disabilities described in section 602(3) of IDEA;

(m) Respond to requests from OSEP for information about the needs and experiences of parents served by the PTI to inform OSEP's analysis of State progress towards improving outcomes for children with disabilities;

(n) Annually report to the Department on—

(1) The number and demographics of parents to whom the PTI provided information and training in the most recently concluded fiscal year,

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[1] For the purpose of this notice, the term "high-poverty school" means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

[2] For the purpose of this notice, the term "persistently lowest-achieving schools means," as determined by the State—

(a)(1) Any Title I school in improvement, corrective action, or restructuring that (i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (2) Any secondary school that is eligible for, but does not receive, Title I funds that—(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

(b) To identify the persistently lowest-achieving schools, a State must take into account both—(i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) The school's lack of progress on those assessments over a number of years in the "all students" group. For the purposes of this priority, the Department considers schools that are identified as Tier I or Tier II schools under the School Improvement Grants Program (see 75 FR 66363) as part of a State's approved FY 2009, FY 2010, or FY 2011 application to be persistently lowest-achieving schools. A list of these Tier I and Tier II schools can be found on the Department's Web site at *www2.ed.gov/programs/sif/index.html.*

including additional information regarding the parents' unique needs and the levels of service provided to them; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities such as parents of children attending high-poverty schools and the State's persistently lowest achieving schools, by providing evidence of how those parents were served effectively;

(o) Respond to requests from the OSEP-funded National and Regional Parent Training Assistance Centers (PTACs) and use the technical assistance services of the National and Regional PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. Regional PTACs are charged with assisting PTIs and CPRCs with administrative and programmatic issues;

(p) In collaboration with OSEP and the National PTAC, participate in an annual collection of program data for the PTIs and CPRCs funded under sections 671 and 672 of IDEA, respectively; and

(q) Maintain ongoing communication with the OSEP Project Officer through phone conversations and email communication.

In addition, the PTI's board of directors must meet not less than once in each calendar quarter to review the activities for which the award was made, and annually submit to the Secretary a written review of the PTI's activities conducted during the preceding fiscal year.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1471 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Awards: Discretionary grants.

Estimated Available Funds: $486,599.

Maximum Award: We will reject any application that proposes a budget exceeding the following maximum amounts for a single budget period of 12 months:

Arkansas: $258,634.

Montana: $227,965.

The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: We are accepting only applications that propose to serve Arkansas and Montana.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months.

The Department took into consideration current funding levels, population distribution, poverty rates, and low-density enrollment when determining the award amounts for grants under this competition. In the following States, one award may be made for up to the amounts listed to a qualified applicant for a PTI Center to serve the entire State.

Arkansas	$258,634
Montana	$227,965

III. Eligibility Information

1. *Eligible Applicants:* Parent organizations.

Note: Section 671(a)(2) of IDEA defines a "parent organization" as a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention; and

(ii) Individuals with disabilities; and

(3) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, or from either the Education Publications Center (ED Pubs) or the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA Number 84.328M.

To obtain a copy from the program office, contact: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., room 4057, Potomac Center Plaza (PCP), Washington DC 20202–2600. Telephone: (202) 245–6595. If you use a TDD or TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles,

headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 25, 2013.

Deadline for Transmittal of Applications: June 10, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 8, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, the Board Chair of the parent organization applying for a grant must (1) be designated by the organization as an Authorized Organization Representative (AOR); and (2) register with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Parent Training and Information Centers competition, CFDA number 84.328M, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Parent Training and Information Centers competition at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.328, not 84.328M).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at www.G5.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, PCP, Washington, DC 20202–2600. FAX: (202) 245–7617.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Training and Information for Parents of Children with Disabilities program. The measures focus on the extent to which projects provide high-quality materials, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures in annual reports submitted to the Department.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation award, the Secretary also considers whether the grantee is operating in

compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, PCP, Washington, DC 20202–2600. Telephone: (202) 245–6595.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 22, 2013.

Michael Yudin,

Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–09806 Filed 4–24–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Asian Americans and Pacific Islanders; Notice of an Open Meeting

AGENCY: President's Advisory Commission on Asian Americans and Pacific Islanders, U.S. Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Advisory Commission on Asian Americans and Pacific Islanders (Commission). The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: May 6–7, 2013.

Time: 9:00–5:00 p.m. (May 6, 2013); 12:45 p.m.–5:00 p.m. (May 7, 3013) EDT.

ADDRESSES: The Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Shelly W. Coles, White House Initiative on Asian Americans and Pacific Islanders, 400 Maryland Avenue SW., Washington, DC 20202; telephone: (202) 453–7277, fax: 202–453–5632.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Asian Americans and Pacific Islanders is established under Executive Order 13515, dated October 14, 2009 and subsequently continued and amended by Executive Order 13585. Per E.O. 13515, The Commission shall provide advice to the President, through the Secretary of Education and a senior official to be designated by the President, as Co-Chairs of the Initiative, on: (i) The development, monitoring, and coordination of executive branch efforts to improve the quality of life of AAPIs through increased participation in Federal programs in which such persons may be underserved; (ii) the compilation of research and data related to AAPI populations and subpopulations; (iii) the development, monitoring, and coordination of Federal efforts to improve the economic and community development of AAPI businesses; and (iv) strategies to increase public and private-sector collaboration, and community involvement in improving the health, education, environment, and well-being of AAPIs.

Agenda

The purpose of the meeting is to discuss and reflect upon the Commission's past work; review the work of the White House Initiative on Asian Americans and Pacific Islanders; and determine key strategies to help meet the Commission's charge as outlined in E.O. 13515.

Additional Information

Individuals of the public who would like to attend the meeting on May 6–7, 2013, of the President's Advisory Commission on Asian Americans and Pacific Islanders shall R.S.V.P. to Shelly Coles via email at *shelly.coles@ed.gov* no later than, May 2, 2013 at 3:00 p.m. EDT.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Shelly Coles at (202) 453–7277, no later than Monday, April 22, 2013. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities. Due to time constraints, there will not be a public comment period at this meeting. However, individuals wishing to provide comment(s) about the White House Initiative on Asian Americans and Pacific Islanders or the President's Advisory Commission on Asian Americans and Pacific Islanders may contact Shelly Coles via email at *shelly.coles@ed.gov.* Please include in the subject line, the wording, "Public Comment".

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Asian Americans and Pacific Islanders, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, Monday–Friday during the hours of 8:30 a.m. to 5:00 p.m.

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Dated: April 19, 2013.

Martha Kanter,

Under Secretary, U.S. Department of Education.

[FR Doc. 2013–09712 Filed 4–24–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–14–000]

Commission Information Collection Activities (FERC Form 80); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC Form 80, Licensed Hydropower Development Recreation Report.

DATES: Comments on the collection of information are due June 24, 2013.

ADDRESSES: You may submit comments (identified by Docket No. IC13–14–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–80, Licensed Hydropower Development Recreation Report

OMB Control No.: 1902–0106

Type of Request: Three-year extension of the FERC Form 80 information collection requirements with no changes to the current reporting requirements. FERC is requesting approval of a formatting revision to the general information portion of the form.

Abstract: FERC uses the information on the FERC Form 80 (also known as "FERC–80,") to implement the statutory provisions of sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA), 16 U.S.C. 797, 803. 825c & 8254. FERC's authority to collect this information comes from section 10(a) of the FPA which requires the Commission to be responsible for ensuring that hydro projects subject to FERC jurisdiction are consistent with the comprehensive development of the nation's waterway for recreation and other beneficial public uses. In the interest of fulfilling these objectives, FERC expects licensees subject to its jurisdiction to recognize the resources that are affected by their activities and to play a role in protecting such resources.

FERC Form 80 is a report on the use and development of recreational facilities at hydropower projects licensed by the Commission. Applications for amendments to licenses and/or changes in land rights frequently involve changes in resources available for recreation. FERC utilizes the FERC Form 80 data when analyzing the adequacy of existing public recreational facilities and when processing and reviewing proposed amendments to help determine the impact of such changes. In addition, the FERC regional office staff uses the FERC Form 80 data when conducting inspections of licensed projects. FERC inspectors use the data in evaluating compliance with various license conditions and in identifying recreational facilities at hydropower projects.

The data which FERC Form 80 requires are specified by Title 18 of the Code of Federal Regulations (CFR) under 18 CFR 8.11 and 141.14 (and are discussed at *http://www.ferc.gov/docs-filing/forms.asp#80).*

FERC collects the FERC Form 80 once every six years. The last collection was due on April 1, 2009, for data compiled during the 2008 calendar year. The next collection of the FERC Form 80 is due on April 1, 2015, with subsequent collections due every sixth year, for data compiled during the previous calendar year.

The Commission updated the format for the general instructions section of the form for improved readability. Specifically, FERC split a long paragraph into several smaller paragraphs.

FERC has attached to this notice the proposed format change to the general information section. FERC made no changes to the remainder of the instructions, form, and glossary and did not attach those to this notice.

Type of Respondents: Hydropower project licensees

Estimate of Annual Burden[1]*:* For each reporting period, FERC estimates the total Public Reporting Burden for this information collection as: (a) 400 respondents, (b) 1 response/respondent, and (c) 3 hours per response, giving a total of 1,200 burden hours. FERC spreads the burden hours and costs over the six-year collection cycle in the table below. These are the figures FERC will submit to OMB.

FERC–80—LICENSED HYDROPOWER DEVELOPMENT RECREATION REPORT

Number of respondents	Number of responses per respondent[2]	Total number of responses	Average burden hours per response	Estimated total annual burden
(A)	(B)	(A) × (B) = (C)	(D)	(C) × (D)
400	0.167	66.8	3	200

[1] FERC defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] FERC divides the responses per respondent by six because this collection occurs once every six years.

The total estimated annual cost burden to respondents is $14,000 [200 hours * $70/hour[3] = $14,000].

Comments: The Commission invites comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 18, 2013.

Kimberly D. Bose,

Secretary.

[NOTE: The remainder of the FERC Form 80 (instructions, form, and glossary) is unchanged and is not included here.]

Attachment

REVISED GENERAL INFORMATION FORMAT

FERC Form 80, Licensed Hydropower Development Recreation Report

General Information:

This form collects data on recreational resources at projects licensed by the Federal Energy Regulatory Commission (Commission) under the Federal Power Act (16 U.S.C. 791a–825r). This form must be submitted by licensees of all projects except those specifically exempted under 18 CFR 8.11(c).

For regular, periodic filings, submit this form on or before April 1, 2015. Submit subsequent filings of this form on or before April 1, every 6th year thereafter (for example, 2021, 2027, etc.).

For initial Form No. 80 filings (18CFR 8.11(b)), each licensee of an unconstructed project shall file an initial Form No. 80 after such project has been in operation for a full calendar year prior to the filing deadline. Each licensee of an existing (constructed) project shall file an initial Form No. 80 after such project has been licensed for a full calendar year prior to the filing deadline.

Filing electronically is the preferred manner of filing. (See *http://www.ferc.gov* for more information.) If you cannot file electronically, submit an original and two copies of the form to the: Federal Energy Regulatory Commission, Office of the Secretary, 888 First St. NE., Washington, DC 20426.

The public burden estimated for this form is three hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding the burden estimate or any aspect of this collection of information, including suggestions for reducing burden, to the:

- Federal Energy Regulatory Commission (FERC), email to *DataClearance@FERC.gov;* or mail to FERC, 888 First Street NE., Washington, DC 20426 (Attention: Information Clearance Officer) and
- Office of Management and Budget (OMB), email to *oira_submission@omb.eop.gov;* or mail to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503. Include OMB Control Number 1902–0106 as a point of reference.

No person shall be subject to any penalty for failing to comply with a collection of information if the collection of information does not display a valid control number (44 U.S.C. § 3512(a)).

Instructions:

a. All data reported on this form must represent recreational facilities and services located within the development/project boundary.

b. To ensure a common understanding of terms, please refer to the Glossary.

c. Report actual data for each item. If actual data are unavailable, then please estimate.

Schedule 1. General Data

[FR Doc. 2013–09757 Filed 4–24–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–792–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Fuel Tracker GT&C Section 38 to be effective 6/1/2013.

Filed Date: 4/12/13.

Accession Number: 20130412–5070.

Comments Due: 5 p.m. ET 4/24/13.

Docket Numbers: RP13–793–000.

Applicants: Alliance Pipeline L.P.

Description: April 16–30 2013 to be effective 4/16/2013.

Filed Date: 4/15/13.

Accession Number: 20130415–5001.

Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: RP13–794–000.

Applicants: Viking Gas Transmission Company.

Description: Pooling Points to be effective 1/1/2013.

Filed Date: 4/15/13.

Accession Number: 20130415–5159.

Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: RP13–795–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 04/15/13 Negotiated Rates—BG Energy Merchants, LLC (RTS) 6040–42 & 43 to be effective 4/15/2013.

Filed Date: 4/15/13.

Accession Number: 20130415–5168.

Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: RP13–796–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 04/15/13 Negotiated Rates—Tenaska Gas Storage (HUB) 2835–89 to be effective 4/15/2013.

Filed Date: 4/15/13.

Accession Number: 20130415–5171.

Comments Due: 5 p.m. ET 4/29/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–708–001.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 04/15/13 Negotiated Rates—BG Energy Merchants, LLC (HUB) Amendment 6040–89 to be effective 4/15/2013.

Filed Date: 4/15/13.

Accession Number: 20130415–5185.

Comments Due: 5 p.m. ET 4/29/13.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

[3] FY2013 Estimated Average Hourly Cost per FTE, including salary + benefits.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated April 16, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09777 Filed 4–24–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–59–000; QF11–178–002]

Kootenai Electric Cooperative, Inc.; Notice of Petition for Declaratory Order and Petition for Enforcement

Take notice that on April 16, 2013, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a-3(h) (2011) and Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207 (2012), Kootenai Electric Cooperative, Inc. (Kootenai) filed a petition for declaratory order and petition for enforcement, requesting the Commission to take prompt action to correct the Oregon Public Utility Commission's (OPUC) February 26, 2013 Order [1] concerning sale of electric output from Kootenai's Fighting Creek Landfill Gas Station and to make the determination that the OPUC order violates the Commission's August 31, 2013 order (August 31 Order).[2]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 7, 2013.

Dated: April 18, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09758 Filed 4–24–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Kootenai Electric Cooperative Inc. v. Idaho Power Co.*, OPUC Docket No. UM 1572, Order No. 13–062 (Feb. 26, 2013) (hereinafter "OPUC Order"). The OPUC Order is attached as Exhibit 1.

[2] *Avista Corp.*, 140 FERC ¶ 61,165 (2012).

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13–12; DA 13–535]

Auction of Lower and Upper Paging Band Licenses Scheduled for July 16, 2013; Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 95

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the lower and upper paging bands (Auction 95). This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in the auction.

DATES: Applications to participate in Auction 95 must be filed prior to 6:00 p.m. Eastern Time (ET) on April 30, 2013. Bidding for construction permits in Auction 95 is scheduled to begin on July 16, 2013.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal and general auction questions: Howard Davenport (attorney) at (202) 418–0660; *Mobility Division:* For licensing and service rule questions: Kathy Harris (attorney) or Keith Harper (engineer) at (202) 418–0620. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 95 Procedures Public Notice* released on March 29, 2013. The complete text of the *Auction 95 Procedures Public Notice*, including an attachment and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 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 95 Procedures 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 13–535. The *Auction 95 Procedures Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/95/*, or by using the search function for AU Docket No. 13–12 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/*.

I. General Information

A. Introduction

1. On February 1, 2013, the Wireless Telecommunication Bureau (Bureau) released a public notice seeking comment on competitive bidding procedures to be used in Auction 95. No comments were submitted in response to the *Auction 95 Comment Public Notice* 78 FR 11179, February 15, 2013.

2. On March 29, 2013, the Bureau released a Public Notice that established the procedures and minimum opening bid amounts for the upcoming auction of 5,905 licenses for lower and upper

paging bands spectrum. This auction, which is designated as Auction 95, is scheduled to start on July 16, 2013. This summary provides an overview of the procedures, terms and conditions governing Auction 95 and the post-auction application and payment processes.

3. Auction 95 will offer 5,905 licenses consisting of 4,902 licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz) and 1,003 licenses in the upper paging bands (929–931 MHz). Auction 95 will include licenses that remained unsold from previous auctions, licenses on which a winning bidder in a previous auction defaulted, and licenses for spectrum previously associated with licenses that cancelled or terminated. In a few cases, the available license does not cover the entire geographic area due to an excluded area or previous partitioning.

4. Attachment A to the *Auction 95 Procedures Public Notice* provides a summary of the licenses available in Auction 95. Due to the large number of licenses in Auction 95, the complete list of licenses available for this auction will be provided in electronic format only, available as separate "Attachment A" files at *http://wireless.fcc.gov/auctions/95/*. The "Attachment A" files reflect corrections made to the market name provided for 43 of the licenses listed as available in this auction in the *Auction 95 Comment Public Notice*. Those licenses for which the market name has been corrected are noted by a single "*." The market and license numbers for these licenses are unchanged.

B. License Descriptions

5. In the *Paging Reconsideration Order*, 64 FR 33762, June 24, 1999, the Commission concluded that the licenses in the lower paging bands should be awarded in each of the 175 geographic areas known as Economic Areas (EAs), and the licenses in the upper paging bands should be awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs encompass the United States, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and American Samoa.

6. Tables containing the block/frequency cross-reference list for the paging bands are included in Attachment B to the *Auction 95 Procedures Public Notice*.

C. Rules and Disclaimers

i. Relevant Authority

7. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective bidders should also familiarize themselves with the Commission's rules relating to the lower and upper paging bands, and rules relating to applications, environment, practice and procedure. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 95 Procedures Public Notice* and any future public notices that may be issued in this proceeding.

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in the Bureaus public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*.

ii. Prohibited Communications and Compliance With Antitrust Laws

9. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same or overlapping geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

10. 47 CFR 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for licenses in the same or overlapping geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same or overlapping geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**

11. Applicants are also reminded that, for purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs.

12. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.

13. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. The Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

14. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.

15. Auction 95 applicants selecting licenses for any of the same or overlapping geographic license areas are encouraged not to use the same

individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.2105(c).

b. Prohibition Applies Until Down Payment Deadline

16. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

17. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

18. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly." Moreover, the Commission has found a violation of 47 CFR 1.2105(c) where an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets," and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions." Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as in the case for Auction 95, an applicant's statement to the press that it has lost bidding eligibility and intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, an applicant's public statement of intent not to participate in Auction 95 bidding could also violate the rule.

19. Applicants are also hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of 47 CFR 1.2105(c) that prohibit certain communications. This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures.

20. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate 47 CFR 1.2105(c), particularly in light of the limited information procedures in effect for Auction 95. Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

21. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

22. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

23. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.

e. Section 1.2105(c) Certification

24. By electronically submitting a short-form application, each applicant in Auction 95 certifies its compliance with 47 CFR 1.2105(c). In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular licenses on which it will or will not bid. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications

25. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after

the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

26. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii).

27. 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureau to act expeditiously on those changes when such action is necessary.

g. Procedure for Reporting Prohibited Communications

28. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

29. 47 CFR 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 95 Procedures Public Notice*. For Auction 95, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: *auction95@fcc.gov*. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 6423, Washington, DC 20554.

30. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports. The *Auction 95 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.

h. Winning Bidders Must Disclose Terms of Agreements

31. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

32. A summary listing of documents issued by the Commission and the Bureau addressing the application of 47 CFR 1.2105(c) may be found in Attachment E of the *Auction 95 Procedures Public Notice*. These documents are available on the Commission's auction Web page at *http://wireless.fcc.gov/auctions/prohibited_communications*.

j. Antitrust Laws

33. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: For example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other. Similarly, the Bureau previously reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.

34. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Incumbency Issues

35. There are pre-existing paging incumbent licenses, including public safety entities licensed under either 47 U.S.C. 337 or 47 CFR 1.925. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

a. International Coordination

36. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico. Licensees on the lower paging channels must submit a FCC Form 601 to obtain authorization to operate stations north of Line A or east of Line C because these channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. Although the upper paging channels do not require coordination with Canada, the *U.S.-Canada Interim Coordination Considerations for the Band 929–932 MHz, as amended*, assigns specific 929 MHz and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 MHz and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. In addition, the 929 MHz and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement.

b. Quiet Zones

37. Paging licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

iv. Due Diligence

38. Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction. Geographic area licensees in accordance with the Commission's rules must protect such incumbents from harmful interference. These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

39. The Bureau caution potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. For example there are incumbent operations already licensed and operating in the bands that must be protected. These limitations may restrict the ability of paging licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in this auction and their bidding strategy.

40. The Bureau reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses they are seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.

41. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders establishing rules and policies for the lower and upper paging bands. Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 95 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

42. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 95 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings that might affect its decision to participate in the auction. The Bureau strongly encourages each participant in Auction 95 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 95 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

43. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as pending and future proceedings before the Commission—including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants, incumbent licensees, or the licenses available in Auction 95. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

44. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 95. Each potential bidder is responsible for undertaking research to ensure that any licenses won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

45. Applicants may research the Bureau's licensing database in order to determine which frequencies are already licensed to incumbent licensees. Applicants may obtain information about licenses available in Auction 95 through the Bureau's online licensing databases at *http://wireless.fcc.gov/uls*.

46. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

v. Use of Integrated Spectrum Auction System

47. Bidders will be able to participate in Auction 95 over the Internet using the Commission's web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

vi. Environmental Review Requirements

48. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

vii. Bidding Methodology

49. The bidding methodology for Auction 95 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

viii. Pre-Auction Dates and Deadlines

50. The following dates and deadlines apply:

Auction Tutorial Available (via Internet)	by April 30, 2013.
Short-Form Application (FCC Form 175) Filing Window Opens	April 30, 2013; 12:00 noon ET.
Short-Form Application (FCC Form 175) Filing Window Deadline	May 9, 2013; prior to 6:00 p.m. ET.
Upfront Payments (via wire transfer)	June 13, 2013; 6:00 p.m. ET.
Mock Auction	July 12, 2013.
Auction Begins	July 16, 2013.

ix. Requirements for Participation

51. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on May 9, 2013, following the electronic filing procedures set forth in Attachment C to the *Auction 95 Procedures Public Notice;* (2) Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on June 13, 2013, following the procedures and instructions set forth in Attachment D to the *Auction 95 Procedures Public Notice;* and (3) Comply with all provisions outlined in the *Auction 95 Procedures Public Notice* and applicable Commission rules.

II. Short-Form Application (FCC Form 175) Requirements

A. General Information Regarding Short-Form Applications

52. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below. In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

53. Every entity and individual seeking a license available in Auction 95 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on May 9, 2013, following the procedures prescribed in Attachment C to the *Auction 95 Procedures Public Notice.* If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing.

54. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions set forth in Attachment C to the *Auction 95 Procedures Public Notice* and should consult the Commission's rules to ensure that, in addition to the materials all the information required is included within their short-form application.

55. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form

applications, only one application may be accepted for filing.

56. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

57. An applicant must select the licenses on which it wants to bid from the "Eligible Licenses" list on its short-form application. To assist in identifying licenses of interest that will be available in Auction 95, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the "Eligible Licenses" list. Selections for one or more of the filter criteria can be made and the system will produce a list of licenses satisfying the specified criteria. Any or all of the licenses in the filtered results may be selected. Applicants will also be able to select licenses from one set of filtered results and then filter on different criteria to select additional licenses.

58. Applicants interested in participating in Auction 95 must have selected license(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their license selections before the deadline for submitting short-form applications. License selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on licenses that were not selected on the applicant's short-form application.

C. Disclosure of Bidding Arrangements

59. An applicant will be required to identify in its short-form application all real parties in interest with whom it has entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

60. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of its bids, bidding strategies, or the particular licenses on which it will or will not bid. If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

61. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (1) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, the Bureau reminds applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

D. Ownership Disclosure Requirements

62. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

63. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

E. Designated Entity Provisions

64. Eligible applicants in Auction 95 may claim small business bidding credits. In addition to the information provided applicants should review carefully the Commission's decisions regarding the designated entity provisions.

i. Bidding Credits for Small Businesses

65. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 95, bidding credits will be available to small businesses and consortia thereof.

a. Bidding Credit Eligibility Criteria

66. In the *Paging Second Report and Order*, 62 FR 11616, March 12, 1997, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the paging service. In the *Paging Reconsideration Order*, the Commission subsequently increased the size of the bidding credits.

67. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that do not exceed $15 million for the preceding three years will receive a 25 percent discount on its winning bid; (2) A bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years will receive a 35 percent discount on its winning bid and; (3) Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit on its winning bid, but not both. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license to an entity not qualifying for the same level of bidding credit.

b. Revenue Disclosure on Short-Form Application

68. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) The applicant, (2) its

affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.

ii. Attributable Interests

a. Controlling Interests

69. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee and; (3) the entity plays an integral role in management decisions.

70. Applicants should refer to 47 CFR 1.2110(c)(2) of the Commission's rules and Attachment C of the *Auction 95 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

b. Affiliates

71. Affiliates of an applicant or controlling interest include an individual or entity that: (1) Directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an "identity of interest" with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C to the *Auction 95 Procedures Public Notice.*

c. Material Relationships

72. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships—referred to as "attributable material relationships"—in determining designated entity eligibility for bidding credits. An applicant or licensee has an "attributable material relationship" when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (1) eligibility for designated entity benefits and (2) liability for "unjust enrichment" on a license-by-license basis.

73. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order,* meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for existing benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, in such circumstances, the Commission reexamines the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.

d. Gross Revenue Exceptions

74. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.

75. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(3)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(3)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions. Additional guidance on claiming this exemption may be found in Attachment C to the *Auction 95 Procedures Public Notice.*

e. Bidding Consortia

76. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business. Thus, each member of a consortium of small businesses that applies to participate in Auction 95 must individually meet the criteria for small businesses. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

F. Tribal Lands Bidding Credit

77. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

G. Provisions Regarding Former and Current Defaulters

78. Current defaulters or delinquents are not eligible to participate in Auction 95, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the

affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a "former defaulter" or a "former delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

79. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

80. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

81. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

82. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

83. Moreover, prospective applicants in Auction 95 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

H. Optional Applicant Status Identification

84. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.

I. Minor Modifications to Short-Form Applications

85. After the deadline for filing initial applications, an Auction 95 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline. Thus, any change in control of an applicant resulting from a merger, for example will be considered a major modification, and the application will consequently be dismissed.

86. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

87. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and license selections.

88. Any letter describing changes to an applicant's short-form application must be submitted by email to *auction95@fcc.gov*. The email summarizing the changes must include a subject or caption referring to Auction 95 and the name of the applicant, for example, "Re: Changes to Auction 95 Short-Form Application of ABC Corp." The Bureau requests that parties format any attachments to email as Adobe®

Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418–0660.

89. Any application amendment and related statements of fact must be certified by (1) the applicant, if the applicant is an individual; (2) one of the partners if the applicant is a partnership; (3) an officer, director, or duly authorized employee, if the applicant is a corporation; (4) a member who is an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

90. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 95. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 95. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

J. Maintaining Current Information in Short-Form Applications

91. 47 CFR 1.65 and 1.2105(b) require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a "major amendment," as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by email to *auction95@fcc.gov*. This email must include a subject or caption referring to Auction 95 and the name of the applicant. The Bureau requests that parties format any attachments to email as Adobe® Acrobat® (pdf) or Microsoft® Word documents. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2105(c).

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available April 30, 2013

92. No later than Tuesday, April 30, 2013, an auction tutorial will be available on the Auction 95 Web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and paging rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

93. The Auction 95 online tutorial replaces the live bidder seminars that have been offered for many previous auctions. The Bureau believes parties interested in participating in this auction will find the interactive, online tutorial a more efficient and effective way to further their understanding of the auction process. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the online application and bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.

94. The auction tutorial will be accessible from the FCC's Auction 95 Web page at *http://wireless.fcc.gov/auctions/95/through* an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 95 Procedures Public Notice*.

B. Short-Form Applications—Due Prior to 6:00 p.m. ET on May 9, 2013

95. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C to the *Auction 95 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on May 9, 2013. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.

96. Applications may generally be filed at any time beginning at noon ET on April 30, 2013, until the filing window closes at 6:00 p.m. ET on May 9, 2013. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on May 9, 2013.

97. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C. FCC Auctions Technical Support is available at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

98. After the deadline for filing FCC Form 175 applications, the Commission

will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

99. After the application filing deadline on May 9, 2013, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).

100. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to *auction95@fcc.gov*.

D. Upfront Payments—Due June 13, 2013

101. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 95 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on June 13, 2013.

i. Making Upfront Payments by Wire Transfer

102. Wire transfer payments must be received before 6:00 p.m. ET on June 13, 2013. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

103. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418–4232. On the fax cover sheet, write "Wire Transfer—Auction Payment for Auction 95." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 95 before the deadline.

104. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.

105. Please note the following information regarding upfront payments: (1) All payments must be made in U.S. dollars; (2) All payments must be made by wire transfer; (3) Upfront payments for Auction 95 go to a lockbox number different from the lockboxes used in previous FCC auctions and; (4) Failure to deliver a sufficient upfront payment as instructed by the June 13, 2013, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

ii. FCC Form 159

106. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction 95 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

iii. Upfront Payments and Bidding Eligibility

107. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 95 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish at least 500 bidding units of eligibility to bid on at least one of the licenses selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with licenses on which they wish to place bids and hold provisionally winning bids in any given round. The total upfront payment does not affect the total dollar amount the bidder may bid on any given license.

108. In the *Auction 95 Comment Public Notice*, the Bureau proposed to make the upfront payments equal to the minimum opening bids. The Bureau further proposed that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The Bureau received no comments on the proposal. The Bureau adopts its proposed upfront payments. The upfront payment and bidding units for each license will be $500 and 500 bidding units. The complete list of licenses for Auction 95 is available as separate "Attachment A" files at *http://wireless.fcc.gov/auctions/95/*.

109. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

110. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

111. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Specific instructions were provided in the *Auction 95 Procedures Public Notice* for submission of wire transfer instructions by fax.

F. Auction Registration

112. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

113. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the "Integrated Spectrum Auction System (ISAS) Bidder's Guide," and the Auction Bidder Line phone number.

114. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, July 10, 2013, call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

115. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY).

G. Remote Electronic Bidding

116. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the "Integrated Spectrum Auction System (ISAS) Bidder's Guide" are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 95.

H. Mock Auction—July 12, 2013

117. All qualified bidders will be eligible to participate in a mock auction on Friday, July 12, 2013. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction. Details will be announced by public notice.

IV. Auction

118. The first round of bidding for Auction 95 will begin on Tuesday, July 16, 2013. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

119. In Auction 95 all licenses will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. The Bureau received no comment on this proposal, and this proposal is adopted. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license.

ii. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

120. In the *Auction 95 Comment Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau sought comment on the proposal to implement anonymous bidding and on any alternatives for Auction 95. The Bureau received no comment on this proposal. Because the Bureau finds that the competitive benefits associated with anonymous bidding support adoption of such procedures, it adopts the limited information procedures proposed in the *Auction 95 Comment Public Notice*.

121. In Auction 95, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications through its online database, and certain application-based information through public notices.

122. To assist applicants in identifying other parties subject to 47 CFR 1.2105(c), the Bureau will notify separately each applicant in Auction 95 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 95, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 95, it will send to each applicant in Auction 95 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply

with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly accessible online short-form application database.

123. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's prohibition of certain communications, pursuant to 47 CFR 1.2105(c), particularly in light of the Commission's procedures regarding the availability of certain information in Auction 95. While applicants' license selections will not be disclosed until after Auction 95 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

124. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.

125. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and 47 CFR 1.2105(c). To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.

iii. Eligibility and Activity Rules

126. The Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 95. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units as listed in the complete list of licenses available as separate "Attachment A" files at *http://wireless.fcc.gov/auctions/95/*. Bidding units assigned to each license do not change as prices rise during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

127. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with licenses covered by the bidder's new and provisionally winning bids.

128. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

129. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Bureau adopts them for Auction 95. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iv. Auction Stages

130. In the *Auction 95 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. Under the Bureau's proposal, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal. The Bureau finds, for now, that two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages as described in the *Auction 95 Procedures Public Notice*. Activity Rule Waivers.

131. In the *Auction 95 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers. The Bureau received no comments on this issue.

132. Therefore, the Bureau adopts this proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

133. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or

eliminating the ability to place additional bids in the auction.

134. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

135. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

v. Auction Stopping Rules

136. For Auction 95, the Bureau proposed to employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops simultaneously on every license. More specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 95.

137. The Bureau proposed to exercise the options discussed in the *Auction 95 Procedures Public Notice* only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction. For example, the Bureau may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau received no comment on these proposals and adopts them for Auction 95.

vi. Auction Delay, Suspension, or Cancellation

138. In the *Auction 95 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue.

139. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasize that it will exercise use of this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

140. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Details regarding formats and locations of round results will also be included in the qualified bidders public notice. Multiple bidding rounds may be conducted each day.

141. The Bureau has the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' needs to study round results and adjust their bidding strategies. The Bureau may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

142. In the *Auction 95 Comment Public Notice*, the Bureau did not propose to establish reserve prices for the licenses in Auction 95. The Bureau did, however, propose to establish minimum opening bids for each license, reasoning that a minimum opening bid, which has been used in other auctions, is an effective tool for accelerating the competitive bidding process. Specifically, for Auction 95, the Bureau proposed to set the minimum opening bid for each license at $500.

143. The Bureau sought comment on its proposal for minimum opening bids and, in the alternative, on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids. The Bureau received no comments on our proposed minimum opening bids.

144. The Bureau finds that the proposed minimum opening bids will promote an appropriate auction pace and avoid unnecessarily prolonging Auction 95. The Bureau therefore adopts its proposal to set the minimum opening bid for each license available in Auction 95 at $500. The complete list of licenses for Auction 95 is available as separate "Attachment A" files at *http://wireless.fcc.gov/auctions/95/*.

iii. Bid Amounts

145. In the *Auction 95 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. No comments were received on this issue. Based on the Commission's experience in prior auctions, the Bureau adopts this proposal for Auction 95.

a. Minimum Acceptable Bids

146. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid

amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

147. In the *Auction 95 Comment Public Notice*, the Bureau proposed to use a minimum acceptable bid percentage of 10 percent. The Bureau did not receive any comments on this proposal. Our experience in previous auctions assures us that a minimum acceptable bid percentage of 10 percent is sufficient to ensure active bidding. Therefore, the Bureau will begin the auction with a minimum acceptable bid percentage of 10 percent.

b. Additional Bid Amounts

148. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, etc.

149. The Bureau proposed to start with eight additional bid amounts (for a total of nine bid amounts) per license but also sought comment on whether, in the alternative, to use fewer or no additional bid amounts per license in a given round. The Bureau proposed to use a bid increment percentage of 5 percent. The Bureau received no comments on this proposal.

150. The Bureau also sought comment on the circumstances under which the Bureau should limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which any additional bid amount may increase compared with the immediately preceding acceptable bid amount. No commenters addressed this question.

151. Therefore, the Bureau adopts its proposal to begin the auction with eight additional bid amounts per license. The Bureau will also start the auction without a limit on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureau determine that circumstances so dictate. Further, the Bureau proposed to retain the discretion to do so on a license-by-license basis. If the Bureau exercise this discretion, it will alert bidders by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

152. At the end of each bidding round, a "provisionally winning bid" will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

153. In the *Auction 95 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids). No comments were received on this proposal.

154. The Bureau adopts the tied bids proposal. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

155. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 95. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

156. A bidder's ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

157. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number ("PIN") created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

158. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows text files containing bid information to be uploaded.

159. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for the following round will be determined.

160. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific license), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If multiple bids are submitted for the same license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with licenses for which the bidder has removed or withdrawn bids do not count towards current activity.

161. Finally, bidders are cautioned to select their bid amounts carefully because bidders that withdraw a provisionally winning bid from a previous round, even if the bid was

mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

162. In the *Auction 95 Comment Public Notice,* the Bureau proposed bid removal and bid withdrawal procedures. The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals of provisionally winning bids in only one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion.

163. The Bureau received no comments on this issue. The proposed procedures will provide each bidder with appropriate flexibility during the auction; therefore the Bureau adopts this proposal for Auction 95.

164. *Bid Removal.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bids" function in the FCC Auction System, a bidder may effectively "undo" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid is placed on a license during a round, it will count towards the activity for that round, but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, i.e., a bid that is removed does not count toward bidding activity.

165. *Bid Withdrawal.* Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the "withdraw bids" function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

166. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

167. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s). If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

168. 47 CFR 1.2104(g)(1) sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 95 Comment Public Notice,* the Bureau proposed to establish this percentage at ten percent for Auction 95 and sought comment on the proposal.

169. The Bureau received no comments on this issue. The Bureau adopted a ten percent payment amount for prior paging auctions, and the Bureau adopts its proposal for a ten percent payment amount for this auction. The Commission will assess an interim withdrawal payment equal to ten percent of the amount of the withdrawn bids. The ten percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. 47 CFR 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

170. Limited information about the results of a round will be made public after the conclusion of the round. Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

viii. Auction Announcements

171. The Commission will use auction announcements to report necessary information such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

172. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, long-form applications, and ownership disclosure information reports.

A. Down Payments

173. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 95 to twenty percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).

B. Final Payments

174. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

175. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 95. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit. Further instructions on these and other filing requirements will

be provided to winning bidders in the auction closing public notice.

D. Ownership Disclosure Information Report (FCC Form 602)

176. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its long-form application.

177. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

178. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

179. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

180. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii).

181. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions/* and clicking on the Tribal Lands Credits link.

F. Default and Disqualification

182. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 95 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

183. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 95 Comment Public Notice,* the Bureau proposed to set the additional default payment for this auction at ten percent of the applicable bid. The Bureau received no comments on this proposal, and it is therefore adopted.

184. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

G. Refund of Remaining Upfront Payment Balance

185. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2013–09802 Filed 4–24–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2013–N–07]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day Notice of Submission of Information Collection for Approval From Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning a proposed information collection to be known as the "National Survey of Mortgage Borrowers" (NSMB). This is a new collection that has not yet been assigned a control number by the Office of Management and Budget (OMB). FHFA intends to submit the proposed information collection to OMB for review and approval of a three-year control number.

DATES: Interested persons may submit comments on or before June 24, 2013.

ADDRESSES: Submit comments to FHFA using any one of the following methods:

- *Email: RegComments@fhfa.gov.* Please include Proposed Collection; Comment Request: "National Survey of Mortgage Borrowers, (No. 2013–N–07)" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the

instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.

• *Mail/Hand Delivery:* Federal Housing Finance Agency, Constitution Center, Eighth Floor (OGC), 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/ Proposed Collection; Comment Request: "National Survey of Mortgage Borrowers, (No. 2013–N–07)". The package should be logged at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

We will post all public comments we receive without change, including any personal information you provide, such as your name, phone number, and address (email or home), on the FHFA Web site at *http://www.fhfa.gov/Default.aspx?Page=89.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Constitution Center, Eighth Floor (OGC), 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Theresa DiVenti, Senior Economist, Office of Systemic Risk and Market Surveillance, by email at *Theresa.DiVenti@fhfa.gov* or by telephone at (202) 649–3113; or Eric Raudenbush, Assistant General Counsel, by email at *Eric.Raudenbush@fhfa.gov* or by telephone at (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, Constitution Center, Eighth Floor (OGC), 400 Seventh Street SW., Washington, DC 20024. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The NSMB will be a quarterly survey of individuals who have recently obtained a loan secured by a first mortgage on single-family residential property. The survey questionnaire will be sent to approximately 7,000 new mortgage borrowers each calendar quarter and will consist of approximately 80–85 multiple choice and short answer questions designed to obtain information about individual residential mortgages and borrowers that is not available elsewhere. The NSMB is one component of a larger project, known as the "National Mortgage Database," which is a joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB).

Section 1324 of the Housing and Economic Recovery of 2008 (HERA) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages. Specifically, FHFA is required to collect data on: the sales price of the mortgaged property; the loan-to-value ratio of the mortgage; the terms of the mortgage; the creditworthiness of the borrowers; whether borrowers on subprime mortgages would have qualified for prime lending; and whether the mortgage was purchased by Fannie Mae or Freddie Mac.[1] The stated purposes of the monthly mortgage survey required under HERA are to enable FHFA to prepare a detailed annual report on the mortgage market activities of Fannie Mae and Freddie Mac relative to the rest of the market for the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives,[2] and to compile a database of timely and otherwise unavailable residential mortgage market information to be made available to the public.[3] In order to fulfill those statutory mandates, as well as to support policymaking and research efforts, FHFA, along with CFPB, is committed to fund, build, and manage the National Mortgage Database. The key purpose of the National Mortgage Database is to make accessible accurate, comprehensive information for monitoring the residential mortgage market by Congress, regulators, and other interested parties.

FHFA draws the core data for the National Mortgage Database from a random 1-in-20 sample of mortgages in the common database of credit information on individual consumers that is maintained by one of the three national credit repositories. These core data may be supplemented, for example, with additional information from sources such as the Home Mortgage Disclosure Act database that is maintained by the Federal Financial Institutions Examination Council,[4] property valuation models, and data files maintained by Fannie Mae and Freddie Mac. The purpose of the NSMB is to complete the National Mortgage Database by obtaining critical information that is not available from existing sources.

Under section 1324 of HERA, FHFA must collect information on the characteristics of individual subprime and nontraditional mortgages, as well as on the characteristics of borrowers on such mortgages, including information on the creditworthiness of those borrowers and information sufficient to determine whether those borrowers would have qualified for prime lending.[5] The NSMB questionnaire is designed, in part, to elicit this information directly from borrowers, who are likely to be the most reliable and accessible—and, in some cases, the only—source for this information. In addition, the questionnaire is designed to elicit more complete information on mortgage terms, mortgaged properties, and borrowers' household demographics than can be obtained from the existing sources. The information obtained from the NSMB, in combination with that obtained from the existing sources, will make the National Mortgage Database a high quality and uniquely comprehensive and timely resource for information on developments in the residential mortgage market. The NSMB will be especially critical in ensuring that the National Mortgage Database contains complete and timely information on the range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics, and particularly creditworthiness, of borrowers for these types of loans.

The information in the National Mortgage Database, including that obtained through the NSMB, will be used for three primary purposes: (1) To prepare the report to Congress on the mortgage market activities of Fannie Mae and Freddie Mac that FHFA is required to submit under section 1324 of HERA; (2) for research and analysis by FHFA and other federal agencies that have regulatory and supervisory responsibilities/mandates related to mortgage markets; and (3) to provide a resource for research and analysis by academics and other interested parties outside of the government. Generally, the National Mortgage Database will allow Congress, regulators, and other interested parties to track emerging trends in the mortgage origination process throughout the United States and will allow them to determine more quickly and accurately when the mortgage origination process is changing in a way that may adversely

[1] *See* 12 U.S.C. 4544(c).

[2] *See* 12 U.S.C. 4544(a), (b).

[3] *See* 12 U.S.C. 4544(c)(3).

[4] *See* 12 U.S.C. 2801–2811.

[5] *See* 12 U.S.C. 4544(c)(2).

affect financial markets, borrowers, and consumers. FHFA intends that the availability of this information, as well as the research and analyses derived from it, will provide sufficient warning to allow it and other regulators to take steps to avoid, or at least to mitigate, major mortgage market crises in the future.

B. Burden Estimate

FHFA estimates the total annual average number of survey recipients at 28,000 (7,000 × 4 calendar quarters), with one response per recipient. The estimate for the average amount of time to complete each survey is 30 minutes. The estimate for the total annual hour burden for respondents is 14,000 hours (28,000 respondents × 0.5 hours).

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on survey respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: April 19, 2013.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2013–09702 Filed 4–24–13; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Fitness, Sports, and Nutrition; Correction

AGENCY: Office of the President's Council on Fitness, Sports, and Nutrition, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services published a notice in the **Federal Register** of April 11, 2013 to announce a meeting of the President's Council on Fitness, Sports, and Nutrition that will be held on May 7, 2013, from 10:00 a.m. to 4:30 p.m., at the Department of Health and Human Services, 200 Independence Ave. SW., Room 800; Washington, DC 20201. The meeting location has changed.

FOR FURTHER INFORMATION CONTACT: Ms. Shellie Pfohl, Executive Director, President's Council on Fitness, Sports, and Nutrition. Phone: (240) 276–9866 or (240) 276–9567.

Correction

In the **Federal Register** of April 11, 2013, FR Doc. 2013–08494 on page 21606, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: Department of Health and Human Services, 200 Independence Ave. SW., Great Hall, Washington, DC 20201.

Dated: April 18, 2013.

Shellie Y. Pfohl,

Executive Director, President's Council on Fitness, Sports, and Nutrition.

[FR Doc. 2013–09815 Filed 4–24–13; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0853]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Asthma Information Reporting System (AIRS) (0920–0853, Expiration 06/30/2013)—Extension—Air Pollution and Respiratory Health Branch (APRHB), National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under the authority of the Public Health Service Act, CDC is seeking a three-year extension of OMB approval for the Asthma Information Reporting System (AIRS) information collection. In 1999, the CDC initiated its National Asthma Control Program, a population-based public health approach to address the burden of asthma. The program supports the goals and objectives of "Healthy People 2020" for asthma and is based on the public health principles of surveillance, partnerships, and interventions. Through AIRS, the information collection request has and will continue to provide NCEH with routine information about the activities and performance of the state and territorial grantees funded under the National Asthma Control Program *http://www.cdc.gov/asthma/nacp.htm*.

The primary purpose of the National Asthma Control Program is to develop program capacity to address asthma from a public health perspective to bring about: (1) A focus on asthma-related activity within states; (2) an increased understanding of asthma-related data and its application to program planning and evaluation through the development and maintenance of an ongoing asthma surveillance system; (3) an increased recognition, within the public health structure of states, of the potential to use a public health approach to reduce the burden of asthma; (4) linkages of state health agencies to other agencies and organizations addressing asthma in the population; and (5) implementation of interventions to achieve positive health impacts, such as reducing the number of deaths, hospitalizations, emergency department visits, school or work days missed, and limitations on activity due to asthma.

Prior to the implementation of AIRS, data were collected on a semi-annual basis from state asthma control programs as part of regular reporting of cooperative agreement activities. States reported information such as progress-to-date on accomplishing intended objectives, programmatic changes, changes to staffing or management, and budgetary information.

As implemented since 2010, the AIRS management information system is comprised of multiple components that enable the electronic reporting of three types of data/information from state asthma control programs: (1) Information that is currently collected as part of regular programmatic reporting, (2) Aggregate level reports of surveillance data on long-term program outcomes, and (3) Specific data indicative of progress made on partnerships, surveillance, interventions, and evaluation.

Regular reporting of this information remains a requirement of the current cooperative agreement mechanism utilized to fund state asthma control programs. States are asked to submit interim and year-end progress report information into AIRS, thus this type of

programmatic information on activities and objectives will continue to be collected twice per year.

The National Asthma Control Program at CDC has access to and analyzes national-level asthma surveillance data (*http://www.cdc.gov/asthma/asthmadata.htm*). With the exception of data from the Behavioral Risk Factor Surveillance System (BRFSS), state level analyses cannot be performed. Therefore, as part of AIRS, state asthma control programs submit aggregate surveillance data to allow calculation of asthma surveillance indicators across all funded states (where data are available) in a standardized manner. Data requests through this system regularly include: Hospital discharges (with asthma as first listed diagnosis), and emergency department visits (with asthma as first listed diagnosis). Under AIRS, participating states annually submit this information to the AIRS system in conjunction with an end-of-year report describing state activities that meet project objectives described above.

National and state asthma surveillance data provide information useful to examine progress on long-term outcomes of state asthma programs. To identify appropriate indicators of program implementation and short-term outcomes for AIRS, CDC previously convened and facilitated workgroups comprised of state asthma control program representatives to generated specific questions to collect data on key features of state asthma control programs: Partnerships, surveillance, interventions, and evaluation.

With technical assistance provided by NCEH staff, AIRS has provided states with uniform data reporting methods and linkages to other states' asthma programs and data. Thus, AIRS has saved state resources and staff time when they embark on asthma activities similar to those being done elsewhere. Also, the AIRS system has been similarly helpful in linking states together on occasions when a given state seeks to report their results at national meetings or publish their findings and program results in scholarly journals. For example, with CDC staff, three state programs co-presented on a panel regarding evaluations of their asthma partnerships at the November, 2012 American Evaluation Association's *Evaluation 2012* conference.

In addition, CDC staff have regularly made requests from AIRS to obtain standardized summaries of state programs regarding such activities as the number of states meeting staffing requirements, number and timeliness of state strategic evaluation plans, topics for individual evaluation selected by states, types and targets of interventions, and use of asthma surveillance data in state programs.

Furthermore, access to standardized AIRS surveillance and programmatic data allows CDC to provide timely and accurate responses to the public and Congress regarding the NCEH asthma program (e.g., how many states have asthma interventions targeting schools, how many children are treated in emergency departments, etc.).

There will be no cost for respondents, other than their time, to participate in AIRS. Based on the program's evaluation of past performance, it was noted that the hours for the interim report should be increased from 2 to 4 hours and those of the end of year be decreased from 6 to 4 hours; however, total burden hours remain at 8 hours per year per respondent. The total estimated annual burden hours are 288.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
State Health Departments	Interim report on activities and objectives	36	1	4
State Health Departments	End of year report on activities, objectives and aggregate surveillance.	36	1	4

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–09756 Filed 4–24–13; 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: Child Support Noncustodial Parent Employment Demonstration (CSPED).

OMB No.: 0970—NEW.

Description: The Office of Child Support Enforcement (OCSE) within the Administration for Children and Families (ACF) is proposing data collection activity as part of the Child Support Noncustodial Parent Employment Demonstration (CSPED). In October 2012, OCSE issued grants to eight state child support agencies to provide employment, parenting, and child support services to noncustodial parents who are having difficulty meeting their child support obligation. The overall objective of the CSPED evaluation is to document and evaluate the effectiveness of the approaches taken by these eight CSPED grantees. This evaluation will yield information about effective strategies for improving child support payments by providing noncustodial parents employment and other services through child support programs. It will generate extensive information on how these programs operated, what they cost, the effects the programs had, and whether the benefits of the programs exceed their costs. The information gathered will be critical to informing decisions related to future investments in child support-led employment-focused programs for noncustodial parents who have difficulty meeting their child support obligations.

The CSPED evaluation will include the following two interconnected components or "studies":

1. Implementation and Cost Study. The goal of the implementation and cost study is to provide a detailed description of the programs—how they are implemented, their participants, the contexts in which they are operated, their promising practices, and their costs. The detailed descriptions will assist in interpreting program impacts, identifying program features and conditions necessary for effective program replication or improvement, and carefully documenting the costs of delivering these services. Key activities of the implementation and cost study will include: (1) Conducting semi-structured interviews with program staff

and selected community partner organizations to gather information on program implementation and costs; (2) conducting focus groups with program participants to elicit participation experiences; (3) administering a web-based survey to program staff and community partners to capture broader staff program experiences; and (4) collecting data on study participant service use, dosage, and duration of enrollment throughout the demonstration using a web-based Management Information System (MIS).

2. Impact Study. The goal of the impact study is to provide rigorous estimates of the effectiveness of the eight programs using an experimental research design. Program applicants who are eligible for CSPED services will be randomly assigned to either a program group that is offered program services or a control group that is not. The study MIS that will document service use for the implementation study will also be used by grantee staff to conduct random assignment for the impact study. The impact study will rely on data from surveys of participants, as well as administrative records from state and county data systems. Survey data will be collected twice from program applicants. Baseline information will be collected from all noncustodial parents who apply for the program prior to random assignment. A follow-up survey will be collected from sample members twelve months after random assignment. A wide range of measures will be collected through surveys, including measures of employment stability and quality, barriers to employment, parenting and co-parenting, and demographic and socio-economic characteristics. In addition, data on child support obligations and payments, Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) benefits, Medicaid receipt, involvement with the criminal justice system, and earnings and benefit data collected through the Unemployment Insurance (UI) system will be obtained from state and county databases.

A 60-Day **Federal Register** Notice was published for this study on January 11, 2013. This 30-Day **Federal Register** Notice covers the following data collection activities: (1) Topic guides for semi-structured interviews with program staff and community partners, (2) focus group guides for program participants, (3) the web-based survey to document program staff and partner experiences, (4) the Management Information System (MIS) functions for tracking participation in the program, (5) an introductory script which program staff will use to introduce the study to participants, (6) the baseline survey used to capture participant characteristics prior to randomization, (7) the MIS functions for conducting random assignment, and (8) the extraction of child support, benefit, earnings, and criminal justice data extracted from state and county administrative data systems.

Respondents: Respondents include program applicants, study participants, grantee staff and community partners, as well as state and county staff responsible for extracting data from government databases for the evaluation. Specific respondents per instrument are noted in the burden table below.

Annual Burden Estimates

The following tables provide the burden estimates for the implementation and cost study and the impact study components of the current request.

IMPLEMENTATION AND COST STUDY

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Staff interview topic guide with program staff and community partners	120	2	1	240
Focus group guide with program participants	240	1	1.5	360
Web survey of program staff and community partners	200	2	0.5	200
Study MIS for grantee and partner staff to track program participation	200	1,500	0.0333	10,000

IMPACT STUDY

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Introductory script:				
Grantee staff	120	105	0.1667	2,100
Program applicants [1]	12,600	1	0.1667	2,100
Baseline survey of study participants	12,000	1	0.5833	7,000
Study MIS used by program staff to conduct random assignment	120	105	0.1667	2,100
Protocol for collecting administrative records	32	2	8	512

[1] Five percent of program applicants are not expected to agree to participate in the study; thus there are 5% more program applicants than study participants.

Estimated Total Annual Burden Hours: 8,204.

Additional Information: In compliance with the requirements of Section 3506(c)(2)(A) of the Paper Work Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. 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, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–09797 Filed 4–24–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0642]

Assay Migration Studies for In Vitro Diagnostic Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Assay Migration Studies for In Vitro Diagnostic Devices." This guidance presents a least burdensome regulatory approach to gain FDA approval of Class III or certain licensed in vitro diagnostic devices in cases when a previously approved assay is migrating (i.e., transitioning) to a new system for which the assay has not been previously approved, licensed, or cleared.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Assay Migration Studies for In Vitro Diagnostic Devices" to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. Alternatively, you may submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, suite 200N, Rockville, MD 20852. 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 to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Sally Hojvat, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5524, Silver Spring, MD 20993–002, 301–796–5455.

For further information concerning the study designs in the guidance:

Marina V. Kondratovich, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5666, Silver Spring, MD 20993–002, 301–796–6036.

For further information concerning the guidance as it relates to devices regulated by CBER:

Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The Food and Drug Administration (FDA) is announcing the availability of a guidance document for industry and FDA staff entitled "Assay Migration Studies for In Vitro Diagnostic Devices." This guidance presents a least burdensome regulatory approach to gain FDA approval of Class III or certain licensed in vitro diagnostic devices in cases when a previously approved assay is migrating (i.e., transitioning) to a new system for which the assay has not been previously approved or licensed. The approach in this guidance is also applicable for some 510(k) cleared devices for which transition to a new system presents specific concerns, either because of the nature of the analyte and indications, or because of the specific technology used (e.g., nucleic acid amplification tests). The focus of this guidance is on the study designs and performance criteria that should be fulfilled in order for a sponsor to utilize the migration study approach in support of the change. The FDA believes that the assay migration study paradigm discussed in this guidance provides a least burdensome scientific and regulatory pathway for manufacturers to transfer a previously approved or licensed assay with full clinical data from an old system to a new system (previously not approved or licensed). The paradigm is suitable in cases when sufficient knowledge can be derived from the documentation of design controls, risk analyses, and prior performance studies on an old system.

The draft of this guidance was issued on January 5, 2009 (74 FR 302). The comment period closed on April 6, 2009. Three sets of comments were received and reviewed by FDA. The guidance was updated to address comments where appropriate. The updated guidance contains additional examples and explanations and supersedes the draft guidance "Assay Migration Studies for In Vitro Diagnostic Devices" issued on January 5, 2009.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on "migration studies" for in vitro diagnostic device. 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. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive "Assay Migration Studies for In Vitro Diagnostic Devices," you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1660 to identify the guidance you are requesting. Guidance documents are also available on the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The

collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: April 19, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09759 Filed 4–24–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0293]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 24 and 25, 2013, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301–977–8900.

Contact Person: Sara J. Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1611, Silver Spring, MD 20993–0002, 301–796–7047, *Sara.Anderson@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On July 24, 2013, the committee will discuss, make recommendations, and vote on information related to the premarket approval application for the Kineflex/C Cervical Artificial Disc sponsored by SpinalMotion. The Kineflex/C is a metal-on-metal (cobalt chrome molybdenum alloy) cervical total disc replacement device. The Kineflex/C is indicated for reconstruction of the intervertebral disc at one level from C3–C7 following single-level discectomy for intractable radiculopathy or myelopathy due to a single-level abnormality localized to the disc space.

On July 25, 2013, the committee will discuss, make recommendations, and vote on information related to the premarket approval application for the Kineflex Lumbar Artificial Disc sponsored by SpinalMotion. The Kineflex Lumbar Artificial Disc is a metal-on-metal (cobalt chrome molybdenum alloy) lumbar total disc replacement device. The Kineflex Lumbar Artificial Disc is indicated for reconstruction of the intervertebral disc at one level (L4–L5 or L5–S1) following single-level discectomy for lumbar degenerative disc disease (DDD) where DDD is defined as discogenic back pain with degeneration of the disc as confirmed by patient history, physical examination, and radiographic studies.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 15, 2013. Oral presentations from the public will be scheduled on July 24 and 25, 2013, between approximately 11:30 a.m. and 12:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 5, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 8, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at *Annmarie.Williams@fda.hhs.gov* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 19, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–09744 Filed 4–24–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Genomics and Society Public Surveys in Conjunction With Smithsonian Museum of Natural History Genome Exhibit

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Human Genome Research Institute (NHGRI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on any of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information Contact: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Laura M. Koehly, Ph.D., Senior Investigator, Social and Behavioral Research Branch, NHGRI, NIH, 31 Center Drive MSC 2073, Building 31, Room B1B54, Bethesda, MD 20892, or call non-toll-free number (301) 451–3999, or Email your request, including your address to: *koehlyl@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Genomics and Society Public Surveys in Conjunction with National Museum of Natural History Genome Exhibit, 0925–NEW, National Human Genome Research Institute (NHGRI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Human Genome Research Institute's (NHGRI) strategic plan puts a strong focus on understanding more fully the societal implications of recent genomic advances. Currently, there is limited knowledge about the public's view regarding genomics and society. The upcoming exhibit at the Smithsonian National Museum of Natural History, "Genome: Unlocking Life's Code", provides a unique opportunity to obtain the perspectives of the public about the role of genomics in society. Surveys included in this project consider a broad range of topics related to Genomics and Society, including the following content areas:

- Beliefs about the role of genomics in health conditions and associated risk factors;
- The role of friends, family, media, and health professionals in gathering and communicating health risk information;
- Implications of genetics knowledge in understanding race and ancestry;
- Opinions regarding genetics knowledge necessary for making legal, health, and lifestyle decisions.

The exhibit is scheduled to open in June, 2013, and will reside at the National Museum of Natural History for one year after which it will travel across the country. Data collection for this project is anticipated to begin fall, 2013 and continue through the course of the exhibit. Data collection will occur under the direction of the National Institutes of Health (NIH) National Human Genome Research Institute (NHGRI) in partnership with the Smithsonian Institute's National Museum of Natural History.

Adults (18+ years) will be recruited through the exhibit using two different approaches. First, interactive displays within the exhibit will offer visitors the opportunity to text responses to questions related to genomics and genomic information. Respondents will be sent an automatic invitation to complete online surveys and a link to the Web site containing these surveys. Text message content will be collected by a third party short code texting service that will remove personal identifying information from the text message responses. Second, participants will also be recruited via a link to the surveys on the National Museum of Natural History's Web site. The URL for this survey site may also be advertised separately through media and social media channels.

The surveys will be available on a designated survey Web site hosted by the NHGRI. Visitors to the survey Web site can fill out the surveys if they choose. After completing an online consent confirming eligibility and a short demographic module, participants will be offered the option to complete one or more of the seven available surveys. In 2012, 7.6 million people visited the National Museum of Natural History. We estimate that our recruitment efforts will reach 1% of these visitors, 75% of whom will choose to complete one or more of the surveys. If these anticipated recruitment numbers are not met, a market research survey company may be used to recruit participants.

The data to be collected are primarily for research purposes; responses will be summarized and published in scientific journals as well as made available to the public through PubMed Central. Responses may also be used to inform community education programs sponsored by the NHGRI.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 32,752.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Text Responses	76,000	5	1/60	6,333
Consent and Demographics Screener	57,000	1	5/60	4,750
Health Communication and Networks Survey	10,000	1	30/60	5,000
Genomics and Health Beliefs Survey	10,000	1	20/60	3,333
Genomics in Decision Making Survey	10,000	1	15/60	2,500

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Genomics of Weight Survey	10,000	1	15/60	2,500
Genomics of Behavioral Dispositions Survey	10,000	1	12/60	2,000
Genomics and Self-Concept Survey	10,000	1	5/60	833
Race, Ancestry, Identity and Genomics Survey	10,000	1	15/60	2,500

Dated: April 19, 2013.

Gloria Butler,

Project Clearance Liaison, NHGRI, National Institutes of Health.

[FR Doc. 2013–09824 Filed 4–24–13; 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 Conflict: Cancer Biology and Genetics.

Date: May 21, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Engineering and Neurogenetics.

Date: May 22, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@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: April 19, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–09753 Filed 4–24–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0027]

P25 Compliance Assessment Program for Communications Equipment

AGENCY: Science and Technology Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security is seeking Expressions of Interest from laboratory accreditation bodies, which are International Laboratory Accreditation Cooperation (ILAC) Full Members and signatories to the ILAC mutual recognition arrangements (MRAs) and which are capable of providing accreditation services for laboratories participating in the Project 25 (P25) Compliance Assessment Program (P25 CAP).

P25 is a standard which enables interoperability among digital two-way land mobile radio communications products created by and for public safety professionals. P25 CAP is a formal, independent process for ensuring that communications equipment that is declared by the manufacturer to be P25 compliant in fact meets P25 standards. Accreditation of the test laboratories that carry out the compliance assessment is currently conducted by P25 CAP itself, but DHS is considering a transition to compliance assessment by third-party laboratory accreditation organizations.

As a first step in the process, the DHS is gauging interest from laboratory accreditation bodies. This Request for Expressions of Interest (REI) is for information and planning purposes only. It is not a broad agency announcement, Request for Proposals or Quotations, or other form of solicitation for bids, and it is not a commitment or obligation by DHS to make award of any contractual instrument or make any payment.

DATES: May 28, 2013.

ADDRESSES: Expressions of interest should be submitted to *SandTFRG@hq.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Cuong Luu, Program Manager, Office for Interoperability and Compatibility, U.S. Department of Homeland Security, tel: 202–254–6374, *cuong.luu@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

P25 is a standards development process for the design, manufacture, and evaluation of interoperable digital two-way land mobile radio communications products created by and for public safety professionals. The goal of P25 is to specify formal standards for interfaces between the various components of a land mobile radio system commonly used by emergency responders in portable handheld and mobile vehicle-mounted devices. The P25 standard enables interoperability among different manufacturers' products.

P25 CAP was developed by DHS and the National Institute of Standards and Technology (NIST) to identify equipment that complies with P25 standards. P25 CAP provides first responders with documentation of interoperability they need to inform their purchasing decisions. P25 CAP is a voluntary program that allows manufacturers to publicly attest to their products' compliance with P25 standards through a Suppliers' Declaration of Compliance Document (SDoC), substantiated by an Official Summary Test Report. P25 CAP makes

these documents available to the first response community on the Federal Emergency Management Agency's (FEMA) Responder Knowledge Base (RKB) Web site at *http://www.rkb.us.*

P25 CAP accepts test reports from certified first (where the laboratory is operated by the manufacturer), second (where the laboratory is operated by the Federal government), and third party laboratories (where the laboratory is operated by an independent party).

Products are tested for performance, conformance, and interoperability. The relevant technical requirements and test methods have been selected by P25 CAP, and the currently accredited laboratories have been assessed for their competence to test to specific or all of the test criteria. The current P25 CAP laboratory recognition process is detailed in NIST Handbook 153.

Eight test laboratories are currently accredited under P25 CAP. P25 CAP has informed these eight laboratories that they may be required to seek re-accreditation from any DHS-identified designated laboratory accreditation body(ies) in order to maintain their P25 CAP accreditation. The P25 CAP will consider accreditation organizations for participation and will recognize laboratories appropriately-accredited by any DHS-identified designated accreditation bodies. P25 CAP has developed a transition plan that will allow time for DHS-designated laboratory accreditation body(ies) to develop and offer an accreditation program for P25 CAP testing. This transition program may include appropriate workshops for interested parties, *i.e.*, candidate laboratories, radio manufacturers, and others.

Expressions of Interest

Laboratory accreditation bodies are invited to respond to this notice with an expression of interest, including (1) the name of organization; (2) a contact person; (3) telephone number; and (4) email address.

Laboratory accreditation bodies participating in the P25 CAP program will be required to: (a) Maintain their ILAC MRA Signatory status; (b) Nominate subject matter expert assessors; (c) Participate in P25-provided training activities, and (d) Accredit laboratories to the requirements of ISO/IEC 17025, the international standard for requirement for competence of testing and calibration laboratories, and P25 CAP specific requirements.

A responding laboratory accreditation body should also discuss its: (e) Access to assessors with expertise in areas relevant to the P25 standard; (f) Prior experience with similar technologies; and (g) Accreditation of one or more of the currently designated laboratories for similar technologies.

Expressions of Interest should note the FRN docket number in the subject line and be no longer than 10 pages. They the above factors and be submitted to *SandTFRG@hq.dhs.gov.* Responses to this notice will be acknowledged by DHS. Information obtained as a result of this notice will be used as considerations for the restructuring of the P25 CAP.

Interested parties should avoid including any business confidential or proprietary information in its expression of interest. If such information must be included, it should be clearly marked and the interested party must provide justification as to why such information is confidential and/or proprietary. DHS will handle such information in accordance with the Freedom of Information Act (5 U.S.C. 552).

This Request for Expressions of Interest is for information and planning purposes only. It is not a broad agency announcement, Request for Proposals or Quotations, or other form of solicitation for bids, and it is not a commitment or obligation by DHS to make award of any contractual instrument or make any payment. The cost for the preparation and submission of a response to this notice is solely the responsibility of the interested party. DHS will make no payment(s) associated with this Request for Expressions of Interest.

Additional information can be found at:

Project 25: *http://www.safecomprogram.gov/currentprojects/project25.*

Project 25 Compliance Assessment Program and Compliance Assessment Bulletins: *http://www.safecomprogram.gov/currentprojects/project25cap.*

NIST Handbook 153: *http://www.safecomprogram.gov/SiteCollectionDocuments/NISTHandbook1532009REVEdition_16Jul09.pdf.*

P25 CAP Laboratory Recognition (eight laboratories and their scopes of recognition): *http://www.safecomprogram.gov/currentprojects/project25cap/webpages/lr.aspx.*

FEMA Responder Knowledge Base: *https://www.rkb.us.*

Dated: April 12, 2013.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2013–09805 Filed 4–24–13; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0046]

Agency Information Collection Activities: Inter-Agency Alien Witness and Informant Record, Form I–854; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on January 25, 2013 at 78 FR 5477, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 28, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0062 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0046.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make

to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Inter-Agency Alien Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–854; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or Tribal Government. Form I–854 is used by law enforcement agencies to bring alien witnesses and informants to the United States in "S" nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 136 respondents spending an estimated 4 hours and 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 578 hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: April 19, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–09748 Filed 4–24–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 13–07]

Tuna-Tariff Rate Quota; the Tariff-Rate Quota for Calendar Year 2013 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2013.

SUMMARY: Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2013.

DATES: *Effective Dates:* The 2013 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Headquarters Quota Branch, Textile/Apparel Policy and Programs Division, Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229–1155, (202) 863–6560.

Background

It has been determined that 16,006,350 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during the Calendar Year 2013, at the rate of 6.0 percent *ad valorem* under subheading 1604.14.22, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30 HTSUS.

Dated: April 19, 2013.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2013–09749 Filed 4–24–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–34]

Notice of Submission of Proposed Information Collection to OMB; Eligibility of a Nonprofit Corporation/Housing Consultant Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 28, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0057) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies

concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Eligibility of a Nonprofit Corporation/Housing Consultant Certification.

OMB Approval Number: 2502–0057.

Form Numbers: HUD–3433, HUD–3435, HUD–3434.

Description of the need for the information and proposed use: The information collected on the "Eligibility of a Nonprofit Corporation/Housing Consultant Certification" form provides HUD with information to determine whether the sponsor has qualifications necessary for successful sponsorship of housing projects. HUD Program Offices use the data to evaluate a potential sponsor's/mortgagor's qualifications at the pre-application stage to determine that all the documentation required by Chapter 8 of the MAP and Chapter 14 of Handbook 4470.1.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	100	1.1		0.3909	43

Total estimated burden hours: 43.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 18, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–09828 Filed 4–24–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–33]

Notice of Submission of Proposed Information Collection to OMB; Housing Counseling Training Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 28, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0567) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Housing Counseling Training Program.

OMB Approval Number: 2502–0567.

Form Numbers: HUD–424–CB, HUD 2880, SF 424 Supp, SF 424.

Description of the need for the information and proposed use: The Housing Counseling Training NOFA, which requests narrative responses, forms, and supporting documentation, is used by the Department's Office of Housing Counseling to rank applications submitted through Grants.gov. The collection allows HUD to evaluate and select the most qualified applicant(s). Post-award collection, such as quarterly reports, will allow HUD to evaluate grantee performance.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	15	3.4		18.88	963

Total estimated burden hours: 963.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 18, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–09836 Filed 4–24–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2013–N090; 40120–1112–0000–F2]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

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 a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given below, by *May 28, 2013.*

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: David Dell, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: David Dell, Permit Coordinator, telephone 404–679–7313; facsimile 404–678–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES** section) or via electronic mail (email) to: *permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to the Fish and Wildlife Service office listed above (see **ADDRESSES**).

Before including your address, telephone 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Application Number: TE00657B

Applicant: Douglas Shelton, Mobile, Alabama.

Applicant requests authorization to take (survey, capture, handle, and transport) 68 species of freshwater mussels, 12 species of freshwater snails, and 3 species of terrestrial snails throughout Arkansas, Louisiana, Mississippi, Kentucky, Tennessee, Alabama, Georgia, Florida, North Carolina and South Carolina for the purpose of conducting presence/absence/population surveys and assisting in species recovery efforts.

Permit Application Number: TE148282

Applicant: Jack Wilhide, Richmond, Kentucky.

Applicant requests authorization to take (capture, mark, apply transmitters, track, survey, and collect tissues) Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*) and Ozark big-eared bat (*C. t. ingens*) in Arkansas, Kentucky, Tennessee, North Carolina, West Virginia, Virginia, Indiana, Ohio, Illinois, New York, Maryland, Pennsylvania, and Michigan while conducting presence/absence surveys, studies to document habitat use, and population monitoring.

Permit Application Number: TE01335B

Applicant: Emma Willcox, Knoxville, Tennessee.

Applicant requests authorization to take (capture, handle, collect tissues, release, and monitor) Indiana bat (*M. sodalis*) and gray bat (*M. grisescens*) in Tennessee.

Permit Application Number: TE97394A

Applicant: Zachary Couch, Pleasureville, Kentucky.

Applicant requests authorization to take (capture, mark, apply transmitters, track, survey, and collect tissues) Indiana bat (*M. sodalis*), gray bat (*M. grisescens*), and Virginia big-eared bat (*C. t. virginianus*), for the purpose of conducting presence/absence surveys and assisting in species recovery efforts. These activities may be conducted throughout Kentucky, Georgia, Indiana, West Virginia, Ohio, Tennessee, Illinois, Missouri, and Virginia.

Permit Application Number: TE02206B

Applicant: Kefyn Catley, Sylva, North Carolina.

Applicant requests authorization to take (harass) spruce-fir moss spider (*Microhexura montivaga*) during habitat studies in North Carolina and Virginia.

Permit Application Number: TE02200B

Applicant: Atlanta Botanical Garden, Atlanta, Georgia.

Applicant requests authorization to collect seeds of swamp pink (*Helonias bullata*), relict trillium (*Trillium reliquum*), and Tennessee yellow-eyed grass (*Xyris tennesseensis*) from Federal lands for long-term conservation storage and potential propagation if needed for restoration and recovery activities.

Permit Application Number: TE00657B

Applicant: Jeff Selby, Decatur, Alabama.

Applicant requests authorization to take (survey, capture, handle, tag, release) 56 freshwater mussel species, 5 snail species, 7 fish species, and 1 species of turtle for the purpose of conducting presence/absence/population surveys and assisting in species recovery efforts.

Permit Application Number: TE13844A

Applicant: Aquatic Resources, Lexington, Kentucky.

Applicant requests authorization to survey for Indiana bat (*M. sodalis*) throughout the species range for the purpose of conducting presence/absence/population surveys and assisting in species recovery efforts.

Permit Application Number: TE134265

Applicant: SeaWorld Orlando, Orlando, Florida.

Applicant requests authorization to receive and retain, for greater than 45 days, Kemp's Ridley *(Lepidochelys kempii)*, hawksbill *(Eretmochelys imbricata)*, leatherback *(Dermochelys coriacea)*, green *(Chelonia mydas)*, loggerhead *(Caretta caretta)*, and olive ridley *(Lepidochelys olivacea)* sea turtles for veterinary treatment, release, educational display, or euthanasia under certain conditions.

Permit Application Number: TE810274

Applicant: Eco Tech, Louisville, Kentucky.

Applicant requests authorization to take (capture, handle, release) freshwater mussels (Appalachian elktoe (*Alasmidonta raveneliana*), spectaclecase (*Cumberlandia monodonta*), snuffbox (*Epioblasma triquetra*), sheepnose (*Plethobasus cyphyus*), rayed bean (*Villosa fabalis*)) and fish (Cumberland darter (*Etheostoma susannae*)), for the purpose of conducting presence/absence surveys and assisting in species recovery efforts. Activities may occur throughout the species' ranges in Alabama, Arkansas, Kentucky, Mississippi, North Carolina, Tennessee, New York, Pennsylvania, Virginia, West Virginia, Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Ohio, Minnesota, and Wisconsin.

Dated: April 16, 2013.

Mike Oetker,

Acting Regional Director.

[FR Doc. 2013–09714 Filed 4–24–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY910000 L16100000 XX0000]

Notice of Public Meeting; Wyoming Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Wyoming Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held May 21, 2013, (1:30 p.m. to 5:00 p.m.), May 22, (8:00 a.m. to 5:00 p.m.) and May 23, (8:00 a.m. to noon) 2013.

ADDRESSES: The meeting will be at the Best Western Inn at Lander, 260 Grandview Drive, Lander, Wyoming, in the Peaks Conference Center.

FOR FURTHER INFORMATON CONTACT: Cindy Wertz, Wyoming Resource Advisory Council Coordinator, Wyoming State Office, 5353 Yellowstone, Cheyenne, WY 82009; telephone 307–775–6014; email *cwertz@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: This 10-member RAC advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming.

Planned agenda topics include a tour of historic trail sites, discussions of historic trail management, partnerships, recreation and follow-up to previous meetings.

On Tuesday, May 21, the meeting will begin at 1:00 p.m. at the Best Western Inn at Lander. On Wednesday, May 22 at 7:30 a.m., there will be a field tour of historic trail sites. The public may attend the field tour portion of the agenda, but must provide their own transportation. High clearance vehicles are recommended. At noon, the Wyoming Honor Farm will give a presentation on the 25-year partnership with BLM at the Best Western Inn at Lander, followed by presentations and discussions through adjournment that afternoon.

All RAC meetings are open to the public with time allocated for hearing public comments. On Thursday, May 23, there will be public comment period beginning at 8:00 a.m. The public may also submit written comments to the RAC. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. If there are no members of the public interested in speaking, the meeting will move promptly to the next agenda item.

Dated: April 18, 2013.

Mary Jo Rugwell,

Associate State Director.

[FR Doc. 2013–09778 Filed 4–24–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC01000 L10100000.XZ0000 LXSIOVHD0000]

Notice of Public Meeting of the Central California Resource Advisory Council

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 (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

DATES: A business meeting will be held Friday, May 10, 2013, at the Anthony Community Center, N. Center and W. Jacob streets, Visalia, CA, beginning at 8 a.m., followed by a field trip that afternoon to BLM lands in the Case Mountain area. Members of the public are welcome to attend the field trip and meeting. Field trip participants must provide their own transportation and lunch.

On May 11, the meeting will resume at 8 a.m. at the community center. Time for public comment is reserved from 9 a.m. to 10 a.m.

Preceding the full RAC meeting, a meeting of the RAC Off-Highway Vehicle Subgroup will be held on May 9 from noon to 1:30 p.m. at the community center, followed by an orientation for RAC members. Both are open to the public.

FOR FURTHER INFORMATION CONTACT: BLM Central California District Manager Este Stifel, (916) 978–4626; or BLM Public Affairs Officer David Christy, (916) 941–3146.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central California. At this meeting, agenda topics will include an update on Resource Management Plans and other resource management issues. Additional ongoing business will be discussed by the council. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. The meeting

and tour are open to the public, but individuals who wish to attend the tour must provide their own vehicles, food and water. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: April 9, 2013.

David Christy,

Public Affairs Officer.

[FR Doc. 2013–09720 Filed 4–24–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–12562; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and U.S. Department of the Interior, National Park Service, Mesa Verde National Park, Mesa Verde, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on March 15, 2011. This notice corrects the cultural affiliation of the human remains and associated funerary objects in that inventory. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the U.S. Department of the Interior, Bureau of Indian Affairs. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the U.S. Department of the Interior, Bureau of Indian Affairs at the address below by May 28, 2013.

ADDRESSES: Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains and associated funerary objects were removed from sites on the Ute Mountain Ute Reservation, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation determination published in a Notice of Inventory Completion in the **Federal Register** (78 FR 14060–14061, March 15, 2011). After additional research and consultation with subject matter experts, the Bureau of Indian Affairs has reassessed cultural affiliation. Transfer of control of the items in this notice has not occurred.

Correction

In the **Federal Register** (78 FR 14060, March 15, 2011), paragraph 3, sentence one is corrected by deleting the words "(hereinafter referred to as "The Tribes.")."

In the **Federal Register** (78 FR 14060–14061, March 15, 2011), paragraph 10 is corrected by substituting the following paragraph:

Based on the preponderance of evidence, including geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, and expert opinion, officials of the Bureau of Indian Affairs have reasonably determined that the Native American human remains are ancestral Puebloan. Descendants of ancestral Puebloan culture are members of the present-day tribes of the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as "The Tribes").

In the **Federal Register** (78 FR 14060–14061, March 15, 2011), the last sentence of paragraph 11 is corrected by substituting the following sentence:

Lastly, the officials of the Bureau of Indian Affairs have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov*, by May 28, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico, may proceed.

The U.S. Department of the Interior, Bureau of Indian Affairs is responsible for notifying the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico

(previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: March 13, 2013.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–09746 Filed 4–24–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Notice of Availability of the Proposed Notice of Sale (NOS) for Western Gulf of Mexico Planning Area (WPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 233 (WPA Sale 233)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of the Proposed Notice of WPA Sale 233

SUMMARY: BOEM announces the availability of the Proposed NOS for proposed WPA Sale 233. This Notice is published pursuant to 30 CFR 556.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides affected States the opportunity to review the Proposed NOS. The Proposed NOS sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rental rates.

DATES: Affected States may comment on the size, timing, and location of proposed WPA Sale 233 within 60 days following their receipt of the Proposed NOS. The Final NOS will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening currently is scheduled for August 28, 2013.

SUPPLEMENTARY INFORMATION: The Proposed NOS for WPA Sale 233 and a "Proposed Notice of Sale Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: (504) 736–2519.

Agency Contact: Donna Dixon, Leasing Division Chief, *Donna.Dixon@boem.gov.*

Dated: April 11, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–09825 Filed 4–24–13; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–405, 406, and 408 and 731–TA–899–901 and 906–908 (Second Review)]

Hot-Rolled Steel Products From China, India, Indonesia, Taiwan, Thailand, and Ukraine

Scheduling of full five-year reviews concerning the countervailing duty orders on hot-rolled steel products from India, Indonesia, and Thailand and antidumping duty orders on hot-rolled steel products from China, India, Indonesia, Taiwan, Thailand, and Ukraine.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty orders on hot-rolled steel products from India, Indonesia, and Thailand and the revocation of the antidumping duty orders on hot-rolled steel products from China, India, Indonesia, Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 16, 2013.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On February 4, 2013, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that a full review pursuant to section 751(c)(5) of the Act should proceed (78 FR 11901, February 20, 2013). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the

review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on September 13, 2013, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on October 3, 2013, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 24, 2013. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 26, 2013, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 23, 2013. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 15, 2013. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 15, 2013. On November 8, 2013, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 12, 2013, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: April 22, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–09780 Filed 4–24–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On April 19, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States* v. *CEMEX, Inc.*, Civil Action No. 1:09–cv–00019–MSK, Docket No. 202–1.

The proposed consent decree between the United States and CEMEX, Inc. settles government claims brought under Sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. 7413(b) and 7477 for injunctive relief and civil penalties for alleged violations of the Act's Prevention of Significant Deterioration requirements, 42 U.S.C. §§ 7470–7479, and the Non-Attainment New Source Review requirements, Sections 171 through 193 of the CAA, 42 U.S.C. §§ 7501–7515, as enforced through Colorado's State Implementation Plan. 42 U.S.C. § 7410. The alleged violations occurred at CEMEX's Portland cement manufacturing operations located in Lyons, Colorado. The Decree requires CEMEX to install and continuously operate Selective Non-Catalytic Reduction technology on its cement kiln to reduce nitrogen oxides emissions to a level established under the "test and set" regime outlined in the Decree. The Decree also requires CEMEX to pay a civil penalty of $1 million.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *CEMEX, Inc.*, D.J. Ref. No. DJ# 90–5–2–1–09151. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ–ENRD P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $13.00 (25 cents per page

reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–09687 Filed 4–24–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System/Next Generation Identification, Interstate Identification Index, Law Enforcement Online, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

This meeting is open to the public. All attendees will be required to sign-in at the meeting registration desk. Registrations will be accepted on a space available basis. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO). Any member of the public may file a written statement with the Board. Written comments shall be focused on the APB's current issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. R. Scott Trent, DFO, at least seven (7) days in advance of the meeting so that the comments may be made available to the APB for their consideration prior to the meeting.

Anyone requiring special accommodations should notify Mr. Trent at least seven (7) days in advance of the meeting.

Dates and Times: The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 5–6, 2013.

Addresses: The meeting will take place at The Renaissance Portsmouth Hotel, 425 Water Street, Portsmouth, Virginia, 23704, telephone (757) 673–3000.

For Further Information Contact: Inquiries may be addressed to Ms. Skeeter J. Murray; Management and Program Analyst; CJIS Training and Advisory Process Unit, Resources Management Section; FBI CJIS Division, Module C2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–3518, facsimile (304) 625–5090.

Dated: April 10, 2013.

R. Scott Trent,

CJIS Designated Federal Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2013–09707 Filed 4–24–13; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health Administration Data Initiative

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) revision titled, "Occupational Safety and Health Administration Data Initiative," (ODI) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before May 28, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The OSHA has a broad mandate to reduce injuries and illnesses in American workplaces. The OSHA has responded to this mandate by developing several programs, including the promulgation and enforcement of standards, training and educational programs, and cooperative programs.

The annual collection of employer specific injury and illness data through the ODI improves the ability of the OSHA more effectively to use its limited resources in more hazardous workplaces and to reduce OSHA interventions at relatively safe and healthy workplaces. The ODI also supports OSHA compliance with the Government Performance and Results Act, by allowing the agency to monitor the results of its activities, to evaluate its various programs based on program results, to identify the most efficient and effective program mix, and to promote the development of programs and policies based on outcome data.

This information collection is subject to the PRA. The ICR is classified as a revision, because it will implement a DOL Office of the Inspector General recommendation to expand the coverage of the ODI and the Site Specific Targeting Plan for enforcement to include establishments with between 11 and 19 employees. In addition, the ICR will no longer include American Recovery and Reinvestment Act funded construction projects.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0209. The current approval is scheduled to expire on April 30, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 13, 2012 (77 FR 74224).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0209. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Occupational Safety and Health Administration Data Initiative.

OMB Control Number: 1218–0209.

Affected Public: Private Sector (businesses or other for-profits) and State, Local and Tribal Governments.

Total Estimated Number of Respondents: 100,000.

Total Estimated Number of Responses: 100,000.

Total Estimated Annual Burden Hours: 16,667.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 22, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–09789 Filed 4–24–13; 8:45 am]

BILLING CODE 4510–26–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Board of Directors Audit Committee; Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Tuesday, April 30, 2013.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Executive Session with Internal Audit Director
III. Mid Year Discussion
IV. Executive Session with Officers: Pending Litigation
V. Notation Vote Policy
VI. External 3rd Party Audit Communication
VII. FY 2014 Risk Assessment & Draft Internal Audit Plan
VIII. Internal Audit Status Reports
IX. MHA Compliance Update
X. National Foreclosure Mitigation Counseling (NFMC)/Emergency Homeowners Loan Program (EHLP) Compliance Update
XI. OHTS Watch List
XII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2013–09941 Filed 4–23–13; 4:15 pm]

BILLING CODE 7570–02–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Board of Directors Finance, Budget & Program Committee: Sunshine Act Meeting

TIME AND DATE: 1:00 p.m., Thursday, May 2, 2013.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. CALL TO ORDER
II. FY 2013 Budget Update
III. Atlanta Lease
IV. CHC and NC Grants
V. FY 2014 Budget
VI. Financial Report
VII. DC Move Update
VIII. FY 13 Corporate Milestone Report and Dashboard
IX. NFMC, EHLP & MHA
X. NeighborhoodLIFT & CityLIFT
XI. Recent Fundraising & FY13 Grants Report
XII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2013–09944 Filed 4–23–13; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0152]

Evaluations of Explosions Postulated To Occur at Nearby Facilities and on Transportation Routes Near Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to Regulatory Guide (RG) 1.91, "Evaluations of Explosions Postulated to Occur at Nearby Facilities and on Transportation Routes Near Nuclear Power Plants." This regulatory guide describes for applicants seeking nuclear power reactor licenses and licensees of nuclear power reactors methods that the NRC's staff finds acceptable for evaluating postulated explosions at nearby facilities and transportation routes.

ADDRESSES: Please refer to Docket ID NRC–2011–0152 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0152. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search,

select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 2 of Regulatory Guide 1.91 is available under ADAMS Accession No. ML12170A980. The regulatory analysis may be found under ADAMS Accession No. ML12170A989.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR ADDITIONAL INFORMATION CONTACT: Hector Rodriguez-Luccioni, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7685; email: *Hector.Rodriguez-Luccioni@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of RG 1.91 was issued with a temporary identification as Draft Regulatory Guide, DG–1270. This guide describes for applicants and licensees of nuclear power reactors some methods and assumptions the NRC's staff finds acceptable for evaluating postulated explosions at nearby facilities and transportation routes. It describes the calculation of safe distances based on estimates of trinitrotoluene (TNT)-equivalent mass of explosive materials, the calculation of exposure rates based on hazardous cargo transportation frequencies, and the calculation of blast load effects.

This guide describes methods that the NRC's staff considers acceptable to implement Section 100.20(b) of Title 10 the *Code of Federal Regulations* (10 CFR), and 10 CFR part 50, appendix A, General Design Criterion 4. Section 100.20(b) requires that the nature and proximity of hazards related to human activity (e.g., airports, dams, transportation routes, and military and chemical facilities) must be evaluated to establish site parameters for use in determining if a plant design can accommodate commonly occurring hazards, and if the risk of other hazards is very low. General Design Criterion 4 requires that nuclear power plant structures, systems, and components (SSCs) important to safety be appropriately protected against dynamic effects resulting from equipment failures and from events and conditions that may occur outside the nuclear power plant.

II. Further Information

DG–1270 was published in the **Federal Register** on July 20, 2011 (76 FR 43356) for a 60-day public comment period. The public comment period closed on September 19, 2012. Public comments on DG–1270 and the staff responses to the public comments are available under ADAMS Accession No. ML12170A987.

III. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the "Implementation" section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses, early site permits or combined licenses.

This regulatory guide may be applied to applications for operating licenses, early site permits, and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide and to future applications for operating licenses, early site permits, and combined licenses submitted after the issuance of the regulatory guide. Such action does not constitute backfitting as defined in 10 CRF 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Dated at Rockville, Maryland, this 17th day of April, 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–09795 Filed 4–24–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0073]

Compliance With Information Request, Flooding Hazard Reevaluation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Japan Lessons-Learned Project Directorate guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing draft Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD–ISG), JLD–ISG–2013–01, "Guidance for Estimating Flooding Hazards due to Dam Failure." This draft JLD–ISG provides guidance acceptable to the NRC staff for reevaluating flooding hazards due to dam failure for the purpose of responding to enclosure 2 of a March 12, 2012, information request.

DATES: Comments must be filed no later than May 28, 2013. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0073. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and

Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. G. Edward Miller, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2481; email: *Ed.Miller@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0073 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0073.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The draft JLD–ISG–2013–01 is available under ADAMS Accession No. ML13057A863.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Interim Staff Guidance Web site:* JLD–ISG documents are also available online under the "Japan Lessons Learned" heading at *http://www.nrc.gov/reading-rm/doc-collections/#int*.

B. Submitting Comments

Please include Docket ID NRC–2013–0073 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background Information

The NRC staff developed draft JLD–ISG–2013–01 to provide guidance acceptable to the NRC staff for reevaluating flooding hazards due to dam failure for the purpose of responding to enclosure 2 of the March 12, 2012, Request for Information (ADAMS Accession No. ML12053A340). This ISG is being issued in draft form for public comment to involve the public in development of this guidance.

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height that inundated the Fukushima Dai-ichi nuclear power plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan and significantly affected the infrastructure and industry in the northeastern coastal areas of Japan. When the earthquake occurred, Fukushima Dai-ichi Units 1, 2, and 3, were in operation and Units 4, 5, and 6, were shut down for routine refueling and maintenance activities. The Unit 4 reactor fuel was offloaded to the Unit 4 spent fuel pool. Following the earthquake, the three operating units automatically shut down and offsite power was lost to the entire facility. The emergency diesel generators started at all six units providing alternating current (ac) electrical power to critical systems at each unit. The facility response to the earthquake appears to have been normal. Approximately 40 minutes following the earthquake and shutdown of the operating units, however, the first large tsunami wave inundated the site, followed by additional waves. The tsunami caused extensive damage to site facilities and resulted in a complete loss of all alternating current electrical power at Units 1 through 5, a condition known as station blackout. In addition, all direct current electrical power was lost early in the event on Units 1 and 2 and, after some period of time, at the other units. Unit 6 retained the function of one air-cooled EDG. Despite their actions, the operators lost the ability to cool the fuel in the Unit 1 reactor after several hours, in the Unit 2 reactor after about 70 hours, and in the Unit 3 reactor after about 36 hours, resulting in damage to the nuclear fuel shortly after the loss of cooling capabilities.

Following the events at the Fukushima Dai-ichi nuclear power plant, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC's regulations and processes, and determining if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, "Near-Term Report and Recommendations for Agency Actions Following the Events in Japan," dated July 12, 2011 (ADAMS Accession No. ML11186A950). These recommendations were enhanced by the NRC staff following interactions with stakeholders. Documentation of the staff's efforts is contained in SECY–11–0124, "Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report," dated September 9, 2011 (ADAMS Accession No. ML11245A158) and SECY–11–0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned," dated October 3, 2011 (ADAMS Accession No. ML11272A111).

As directed by the Commission's Staff Requirement Memorandum (SRM) for SECY–11–0093 (ADAMS Accession No. ML112310021), the NRC staff reviewed the NTTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. SECY–11–0124 and SECY–11–0137 established the staff's prioritization of the recommendations based upon the potential for each recommendation to enhance safety.

As part of the SRM for SECY–11–0124, dated October 18, 2011, the Commission approved the staff's proposed actions, including the development of three information

requests under 10 CFR 50.54(f). The information collected would be used to support the NRC staff's evaluation of whether further regulatory action was needed in the areas of seismic and flooding design, and emergency preparedness.

In addition to Commission direction, the Consolidated Appropriations Act, Public Law 112–074, was signed into law on December 23, 2011. Section 402 of the law directs the NRC to require licensees to reevaluate their design basis for external hazards.

In response to the aforementioned Commission and Congressional direction, the NRC issued a request for information to all power reactor licensees and holders of construction permits under 10 CFR Part 50 on March 12, 2012. The March 12, 2012, letter includes a request that licensees reevaluate flooding hazards at nuclear power plant sites using updated flooding hazard information and present day regulatory guidance and methodologies. The letter also requests the comparison of the reevaluated hazard to the current design basis at the site for each potential flood mechanism. If the reevaluated flood hazard at a site is not bounded by the current design basis, licensees are requested to perform an Integrated Assessment. The Integrated Assessment will evaluate the total plant response to the flood hazard, considering multiple and diverse capabilities such as physical barriers, temporary protective measures, and operational procedures. The NRC staff will review the licensees' responses to this request for information and determine whether regulatory actions are necessary to provide additional protection against flooding.

It should be noted that the NRC requires nuclear power plants to protect against very unlikely flooding hazards. This guidance focuses on developing potential dam failure scenarios that nuclear power plants have to protect against. This guidance should in no way be construed as appropriate for designing, regulating, operating, or maintaining a dam. Such guidance has been developed by the appropriate responsible agency that designs, regulates, operates, or maintains the dam(s) of interest. Although this ISG attempts to be consistent with best practices and guidance developed by other federal and state agencies, there may be differences. In some cases, the differences between this ISG and the guidance developed by other agencies may be due to differences in regulatory responsibilities.

Proposed Action

By this action, the NRC is requesting public comments on draft JLD–ISG–2013–01. This draft JLD–ISG provides guidance acceptable to the NRC staff for reevaluating flooding hazards due to dam failure for the purpose of responding to enclosure 2 of the information request. The NRC staff will make a final determination regarding issuance of the JLD–ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 17th day of April 2013.

For the Nuclear Regulatory Commission.

David L. Skeen,

Director, Jopon Lessons-Leorned Project Directorote, Office of Nucleor Reactor Regulotion.

[FR Doc. 2013–09796 Filed 4–24–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Evolutionary Power Reactor; Notice of Meeting

The ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR) will hold a meeting on May 8–9, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of portions that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, May 8, 2013—8:30 a.m. Until 4:30 p.m.; Thursday, May 9, 2013—8:30 a.m. Until 12:00 p.m.

The Subcommittee will review and discuss Chapter 13 and portions of Chapter 2 of the Safety Evaluation Report (SER) with open items for the Calvert Cliffs, Unit 3 Combined License Application (COLA) associated with the U.S. EPR Design Control Document (DCD). The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kathy Weaver (Telephone 301–415–6236 or Email: *Kathy.Weaver@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: April 16, 2013.

Girija Shukla,

Acting Chief, Technicol Support Branch, Advisory Committee on Reoctor Sofeguords.

[FR Doc. 2013–09792 Filed 4–24–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 8, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 8, 2013–12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2013 (77 FR 64146–64147).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: April 17, 2013.

Girija Shukla,

Acting Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–09798 Filed 4–24–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittees on Reliability and PRA; Revision to Notice of Meetings

The ACRS Subcommittee on Reliability and PRA originally scheduled for the morning of April 24, 2013, has been moved to the afternoon of April 24, 2013, 1:00 p.m. until 5:00 p.m.

This notice was previously published in the **Federal Register** on Wednesday, April 17, 2013 [78 FR 22918].

Further information regarding these meetings can be obtained by contacting the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) between 8:15 a.m. and 5:00 p.m.

Dated: April 17, 2013.

Girija Shukla,

Acting Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–09790 Filed 4–24–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–5, SEC File No. 270–155, OMB Control No. 3235–0123.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17a-5 (17 CFR 240.17a-5), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a-5 is the basic financial reporting rule for brokers and dealers.[1] The Rule requires the filing of Form X–17A–5, the Financial and Operational Combined Uniform Single Report ("FOCUS Report"), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The Rule also requires the filing of an annual audited report of financial statements.

The FOCUS Report consists of: (1) Part I, which is a monthly report that must be filed by brokers or dealers that clear transactions or carry customer securities; (2) one of three alternative quarterly reports: Part II, which must be filed by brokers or dealers that clear transactions or carry customer securities; Part IIA, which must be filed by brokers or dealers that do not clear transactions or carry customer securities; and Part IIB, which must be filed by specialized broker-dealers registered with the Commission as OTC derivatives dealers;[2] (3) supplemental schedules, which must be filed annually; and (4) a facing page, which must be filed with the annual audited report of financial statements. Under the Rule, a broker or dealer that computes certain of its capital charges in accordance with Appendix E to Exchange Act Rule 15c3–1 must file additional monthly, quarterly, and annual reports with the Commission.

The variation in the size and complexity of brokers and dealers subject to Rule 17a-5 and the differences in the FOCUS Report forms that must be filed under the Rule make it difficult to calculate the cost of compliance. However, we estimate that, on average, each report will require approximately 12 hours. At year-end 2011, the Commission estimates that there were approximately 4,802 brokers or dealers, and that of those firms there were approximately 513 brokers or dealers that clear transactions or carry customer securities. The Commission therefore estimates that approximately 513 firms filed monthly reports, approximately 4,134 firms filed quarterly reports, and

[1] Rule 17a-5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235–0199).

[2] Part IIB of Form X–17A–5 must be filed by OTC derivatives dealers under Exchange Act Rule 17a-12 and is subject to a separate PRA filing (OMB Control Number 3235–0498).

approximately 63 firms filed annual reports on Form X–17a-5. In addition, approximately 4,650 firms filed annual audited reports. As a result, there were approximately 27,405 total annual responses ((513 × 12) + (4,134 × 4) + 63 + 4,650 = 27,405). This results in an estimated annual burden of 328,860 hours (27,405 annual responses × 12 hours = 328,860).

In addition, we estimate that approximately 9 brokers or dealers will elect to use Appendix E to Rule 15c3–1 to compute certain of their capital charges (as of September 2012, six brokers or dealers have elected to use Appendix E). We estimate that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is about 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, we estimate that the total additional annual burden for these 9 brokers or dealers is approximately 1,080 hours ((48 + 32 + 40) × 9 = 1,080).

The Commission therefore estimates that the total annual burden under Rule 17a-5 is approximately 330,000 hours (328,860 + 1,080 = 329,940, rounded to 330,000).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 22, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09765 Filed 4–24–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–4 and Form 19b–4, SEC File No. 270–38, OMB Control No. 3235–0045.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the existing collection of information provided for in Rule 19b–4 (17 CFR 240.19b–4), under the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a *et seq.*).

Section 19(b) of the Act (15 U.S.C. 78s(b)) requires each self-regulatory organization ("SRO") to file with the Commission copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO. Rule 19b–4 implements the requirements of Section 19(b) by requiring the SROs to file their proposed rule changes on Form 19b–4 and by clarifying which actions taken by SROs are subject to the filing requirement set forth in Section 19(b). Rule 19b–4(n) requires a designated clearing agency to provide an advance notice ("Advance Notice") to the Commission of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by such clearing agency. Rule 19b–4(o) requires a registered clearing agency to submit for a Commission determination any security-based swap, or any group, category, type, or class of security-based swaps it plans to accept for clearing ("Security-Based Swap Submission"), and provide notice to its members of such submissions.

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should be approved, disapproved, or if proceedings should be instituted to determine whether to approve or disapprove the proposed rule change.

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges, national securities associations, registered clearing agencies, notice registered securities future product exchanges, and the Municipal Securities Rulemaking Board.

In fiscal year 2012, thirty-four respondents filed a total of 1,688 proposed rule change responses.[1] Each response takes approximately 38 hours to complete. Thus, the total annual reporting burden for filing proposed rule changes with the Commission is 64,144 hours (1,688 proposals per year × 38 hours per filing).[2] In addition to filing their proposed rule changes with the Commission, the respondents also are required to post each of their proposals on their respective Web sites, a process which takes approximately four hours to complete per proposal. Thus, for 1,688 proposals, the total annual reporting burden on respondents to post the proposals on their Web sites is 6,752 hours (1,688 proposals per year × 4 hours per filing). Further, the respondents are required to update their rulebooks, which they maintain on their Web sites, to reflect the changes that they make in each proposal they file. Thus, for all filings that were not withdrawn by a respondent (120 withdrawn filings in fiscal year 2012) or disapproved by the Commission (2 disapproved filings in fiscal year 2012), the respondents were required to update their online rulebooks to reflect the effectiveness of 1,566 proposals, each of which takes approximately four hours to complete per proposal. Thus, the total annual reporting burden for updating online rulebooks is 6,264 hours ((1,688 filings per year − 120 withdrawn filings − 2 disapproved filings) × 4 hours)). Finally, a respondent is required to notify the Commission if it

[1] The Commission expects four additional respondents to register during the three year period for which this Paperwork Reduction Act Extension is applicable (three as registered clearing agencies and one as a national securities exchange), bringing the total number of respondents to thirty-eight.

[2] In fiscal year 2012, respondents filed 120 optional amendments to their proposals, as well as 629 required prefilings of their proposed rule changes. Because those submissions are part of the Form 19b–4 process as required by Rule 19b-4, they are included within the 38 hour burden estimate, and, because amendments and prefilings are part of a single proposal, they do not constitute a separate response.

does not post a proposed rule change on its Web site on the same day that it filed the proposal with the Commission. The Commission estimates that SROs will fail to post proposed rule changes on their Web sites on the same day as the filing 16 times a year, and that each SRO will spend approximately one hour preparing and submitting such notice to the Commission, resulting in a total annual burden of 16 hours (16 notices × 1 hour per notice).

Clearing agencies have additional information collection burdens. As noted above, a designated clearing agency must file an Advance Notice with the Commission of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by such designated clearing agency. The Commission estimates that 10 designated clearing agencies will each submit 35 Advance Notices per year, with each submission taking 90 hours to complete. The total annual reporting burden for filing Advance Notices is therefore 31,500 hours (10 designated clearing agencies × 35 Advance Notices per year × 90 hours per response).

Designated clearing agencies are required to post all Advance Notices to their Web sites, each of which takes approximately four hours to complete. For 35 Advance Notices, the total annual reporting burden for posting them to respondents' Web sites is 1,400 hours (10 designated clearing agencies × 35 Advance Notices per year × 4 hours per Web site posting). Respondents are required to update the postings of those Advance Notices that become effective, each of which takes approximately four hours to complete. The total annual reporting burden for updating Advance Notices on the respondents' Web sites is 1,400 hours (10 designated clearing agencies × 35 Advance Notices per year × 4 hours per Web site posting).

The respondents are also required to provide copies of all materials submitted to the Commission relating to an Advance Notice to the Board of Governors of the Federal Reserve System (the "Board") contemporaneously with such submission to the Commission, which is estimated to take two hours. The total annual reporting burden for designated clearing agencies to meet this requirement is 700 hours (10 designated clearing agencies × 35 Advance Notices per year × 2 hours per response).

The Commission estimates that six security-based swap clearing agencies will each submit 20 Security-Based Swap Submissions per year, with each submission taking 140 hours to complete resulting in a total annual reporting burden of 16,800 hours (6 respondent clearing agencies × 20 Security-Based Swap Submissions per year × 140 hours per response). Respondent clearing agencies are required to post all Security-Based Swap Submissions to their Web sites, each of which takes approximately four hours to complete. For 20 Security-Based Swap Submissions, the total annual reporting burden for posting them to the six respondents' Web sites is 480 hours (6 respondent clearing agencies × 20 Security-Based Swap Submissions per year × 4 hours per Web site posting). In addition, three of the six respondent clearing agencies that have not previously posted Security-Based Swap Submissions, Advance Notices, and proposed rule changes on their Web sites may need to update their existing Web sites to post such filings online. The Commission estimates that each of these three clearing agencies would spend approximately 15 hours updating its existing Web site, resulting in a total one-time burden of 45 hours (3 respondent clearing agencies × 15 hours per Web site update) or 15 hours annualized over three years.

Respondent clearing agencies will also have to provide training to staff members using the Electronic Form 19b–4 Filing System ("EFFS") to submit Security-Based Swap Submissions, Advance Notices, and/or proposed rule changes electronically. The Commission estimates that each of the six estimated security-based swap clearing agencies will spend approximately 20 hours training all staff members who will use EFFS to submit Security-Based Swap Submissions, Advance Notices, and/or proposed rule changes electronically, for a total of 120 hours (6 respondent clearing agencies × 20 hours) or 40 hours annualized over three years. The Commission also estimates that each of these six clearing agencies will have a one-time burden of 130 hours to draft and implement internal policies and procedures for using EFFS to make these submissions, for a total of 780 hours (6 clearing agencies × 130 hours) or 260 hours annualized over three years. The four remaining clearing agencies that have existing internal policies and procedures for using EFFS will need to update them for submitting Security-Based Swap Submissions and/or Advance Notices with the Commission. The Commission estimates that each of these four clearing agencies will have a one-time burden of 30 hours to draft and implement modifications to their internal policies, for a total of 120 hours (4 clearing agencies × 30 hours) or 40 hours annualized over three years. After the initial training is completed, the Commission estimates that each of the 38 respondents will spend 10 hours each year training new compliance staff members and updating the training of existing compliance staff members to use EFFS, for a total annual burden of 380 hours (38 respondent SROs × 10 hours).

In connection with Security-Based Swap Submissions, counterparties may apply for a stay from a mandatory clearing requirement under Rule 3Ca–1 of the Exchange Act. The Commission estimates that each clearing agency will submit five applications for stays from a clearing requirement per year and it will take approximately 18 hours to retrieve, review, and submit each application. Thus, the total annual reporting burden for the Rule 3Ca–1 stay of clearing requirement would be 540 hours (six respondent clearing agencies × five stay of clearing applications per year × 18 hours to retrieve, review, and submit the stay of clearing information).

Based on the above, the total estimated annual response burden is the sum of the total annual reporting burdens for filing proposed rule changes, Advance Notices, and Security-Based Swap Submissions; training staff to file such proposals; drafting, modifying, and implementing internal policies and procedures for filing such proposals; posting each proposal on the respondents' Web sites; updating Web sites to enable posting of proposals; updating the respondents' online rulebooks to reflect the proposals that became effective; submitting copies of Advance Notices to the Board; and applying for stays from clearing requirements, which is 130,731 hours.

Compliance with Rule 19b–4 is mandatory. Information received in response to Rule 19b–4 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-

Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 22, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09768 Filed 4–24–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Notice of Exempt Preliminary Roll-Up Communication; OMB Control No. 3235–0452, SEC File No. 270–396.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Exchange Act Rule 14a–6(n) (17 CFR 240.14a–6(n)) requires any person that engages in a proxy solicitation subject to Exchange Act Rule 14 a–2(b)(4) [(17 CFR 240.14a–2(b)(4))] to file a Notice of Exempt Preliminary Roll-Up Communication ("Notice") [(17 CFR 240.14a–104)] with the Commission. The Notice provides information regarding ownership interest and any potential conflicts of interest to be included in statements submitted by or on behalf of a person engaging in the solicitation. The Notice takes approximately 0.25 hours per response and is filed by approximately 4 respondents for a total of one annual burden hour.

Written comments are invited on: (a) Whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: April 22, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09773 Filed 4–24–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30472; 812–14081]

Symetra Mutual Funds Trust, et al.; Notice of Application

April 19, 2013

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Symetra Mutual Funds Trust (the "Trust") and Symetra Investment Management, Inc. (the "Adviser").

FILING DATES: The application was filed on October 3, 2012, and amended on March 25, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 13, 2013 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, Symetra Financial Corporation, 777 108th Avenue, Suite 1200, Bellevue, WA 98004.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and currently offers three series which are advised by the Adviser.[1] The Adviser, a Washington state corporation, is, and any future Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser will serve as investment adviser to the Funds under an investment advisory

[1] Applicants request relief with respect to any existing and any future series of the Trust and any other existing and future registered open-end management company or series thereof that: (a) is advised by the Adviser, or any entity controlling, controlled by, or under common control with the Adviser or its successor (each, also an "Adviser"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the requested order (each, a "Fund" and collectively, the "Funds"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant and each series that currently intends to be a Fund is identified in the application. For purposes of the requested order, "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Subadviser (as defined below), that name will be preceded by the name of the Adviser.

agreement with the Trust ("Advisory Agreement") that will have been approved by each respective Fund's shareholders and the Trust's Board of Trustees ("Board"),[2] including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of either the Trust or the Adviser ("Independent Trustees") in the manner required by sections 15(a) and (c) of the Act and rule 18f–2 under the Act.

2. Under the terms of the Advisory Agreement, and subject to the authority of the Board, the Adviser is responsible for the overall management of each Fund's business affairs and selecting each Fund's investments according to that Fund's investment objectives, policies, and restrictions. For the investment management services it will provide to each Fund, the Adviser will receive the fee specified in the Advisory Agreement from such Fund based on the average daily net assets of the Fund. The Advisory Agreement permits the Adviser, subject to the approval of the Board, to delegate certain responsibilities to one or more subadvisers ("Subadvisers"). The Adviser expects to enter into subadvisory agreements with various Subadvisers ("Subadvisory Agreements") to provide investment advisory services to the Funds.[3] Each Subadviser is or will be an investment adviser as defined in section 2(a)(20) of the Act as well as registered, or not subject to registration, with the Commission as an "investment adviser" under the Advisers Act. The Adviser evaluates, allocates assets to and oversees the Subadvisers, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. The Adviser will compensate the Subadvisers out of the advisory fee paid by a Fund to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Subadvisers to manage all or a portion of the assets of a Fund or Funds pursuant to a Subadvisory Agreement and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund, or of the Adviser, other than by reason of serving as a subadviser to one or more of the Funds ("Affiliated Subadviser").

4. Applicants also request an order exempting the Funds from certain disclosure provisions described below that may require a Fund to disclose fees paid by the Adviser to each Subadviser. Applicants seek an order to permit the Trust to disclose for a Fund (as both a dollar amount and as a percentage of the Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadviser; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively, "Aggregate Fee Disclosure"). Any Fund that employs an Affiliated Subadviser will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser subject to the review and approval of the Board, to select the Subadvisers who are best suited to achieve the Fund's investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Adviser and Board consider it appropriate to hire Subadvisers or amend Subadvisory Agreements. Applicants note that the Advisory Agreements and any Subadvisory Agreements with Affiliated Subadvisers will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. If a new Subadviser is retained in reliance on the requested order, the Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures ("Modified Notice and Access Procedures"): (a) Within 90 days after a new Subadviser is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[4] and (b) the Fund will make

[2] The term "Board" also includes the board of trustees or directors of a future Fund.

[3] The Adviser has entered into Subadvisory Agreements with DoubleLine Capital LP and Yacktman Asset Management L.P.

[4] A "Multi-manager Notice" will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Exchange Act, and specifically will, among other things: (a) summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A "Multi-manager Information Statement" will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except

the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, the applicable Board will comply with the requirements of sections 15(a) and 15(c) of the 1940 Act before entering into or amending Subadvisory Agreements.

8. Applicants assert that the requested disclosure relief would benefit shareholders of the Funds because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. Applicants state that the Adviser may be able to negotiate rates that are below a Subadviser's "posted" amounts if the Adviser is not required to disclose the Subadvisers' fees to the public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions: [5]

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of a new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust, or of a Fund, or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09772 Filed 4–24–13; 8:45 am]

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as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

[5] Applicants will only comply with conditions 7, 8, 9 and 12 if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30471; 812–14075]

Goldman Sachs Trust, et al.; Notice of Application

April 19, 2013.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Goldman Sachs Trust and Goldman Sachs Variable Insurance Trust (each a "Trust," together, the "Trusts"), Goldman Sachs Asset Management, L.P ("GSAM") and Goldman Sachs Asset Management International ("GSAMI") (each, an "Initial Adviser" and collectively, the "Initial Advisers"), and Goldman Sachs & Co. ("Goldman Sachs").

FILING DATE: The application was filed on September 7, 2012, and amended February 15, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 14, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: c/o Caroline Kraus, Goldman, Sachs & Co., 200 West Street, New York, NY 10282.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trusts are organized as Delaware statutory trusts and are registered with the Commission as open-end management investment companies. Each of the Initial Advisers is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). GSAM is a Delaware limited partnership. GSAMI is a company organized under the laws of England and Wales. Goldman Sachs, an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities and Exchange Act of 1934, will serve as distributor and transfer agent for the Funds.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Trusts and any other registered open-end management investment company or series thereof that (a) is advised by an Initial Adviser or any person controlling, controlled by or under common control with an Initial Adviser (any such adviser, including an Initial Adviser, an "Adviser"); (b) is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act as the Trusts; (c) invests in other registered open-end management investment companies ("Underlying Funds") in reliance on section 12(d)(1)(G) of the Act; and (d) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a "Fund of Funds"), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[1] Applicants also request that the order exempt any entity, including any entity controlled by or under common control with an Adviser, that now or in the future acts as principal underwriter, or broker or dealer if registered under the Securities Exchange Act of 1934 ("Exchange Act"), with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, Government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, Government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that their request for relief meets this standard.

5. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

while investing in Underlying Funds. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09769 Filed 4–24–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69419; File No. SR–BOX–2013–01]

Self-Regulatory Organizations; BOX Options Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Complex Orders

April 19, 2013.

I. Introduction

On February 20, 2013, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the rules governing the trading of Complex Orders on BOX Market LLC ("BOX"), the options trading facility of the Exchange. On February 27, 2013, the Exchange filed Amendment No. 1 to the proposal. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 8, 2013.[3] The Commission received no comment letters regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended.

II. Description

BOX proposes to amend its rules governing the trading of Complex Orders to: (i) Adopt definitions applicable to Complex Orders; (ii) specify additional order types for Complex Orders; (iii) revise the priority rules for Complex Orders; (iv) revise the rules governing the execution of Complex Orders and establish a filtering process for Complex Orders to assure that each leg of a Complex Order is executed at a price that is equal to or better than the National Best Bid or Offer ("NBBO") and the BOX best bid or offer ("BBO") for that series; (v) provide for the generation of Legging Orders (as defined below); (vi) describe the treatment of Legging Orders in the Price Improvement Period ("PIP") auction; (vii) provide for the generation of Implied Orders (as defined below); (viii) delete or update miscellaneous provisions and rules; and (ix) provide for the display of Legging Orders, Complex Orders, and Implied Orders in BOX's proprietary High Speed Vendor Feed ("HSVF").

A. Definitions

BOX proposes to amend BOX Rule 7240(a) to define a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.[4] BOX notes that its proposed definition of Complex Order is consistent with the definition of Complex Order in the rules of another options exchange, and with the definition of Complex Trade for purposes of the trade-through exception under Options Order Protection and Locked/Crossed National Market System Plan.[5] BOX also proposes to delete references to Stock-Option Orders and Single Stock Future-Option Orders ("SFF-Option Order") in the definition of Complex Order because BOX does not have these order types.[6]

In addition, BOX proposes to add the following defined terms to BOX Rule 7240(a): Complex Order Strategy; cBBO; cNBB; cNBBO; cNBO; and Complex Order Book.[7] Complex Order Strategy or Strategy is proposed to be defined as a particular combination of components of a Complex Order and their ratios to one another.[8] cBBO is proposed to be defined as the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of the Strategy. cNBBO is proposed to be defined as the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of the Strategy.[9] cNBB and cNBO are proposed to be defined, respectively, as the best net bid price for a Complex Order Strategy and the best net offer price for a Complex Order Strategy, in each case based on the NBBO for the individual options components of the Strategy. Complex Order Book is proposed to be defined as the electronic book of Complex Orders maintained by the BOX Trading Host. Finally, "Central Order Book" or "BOX Book" in BOX Rule 100(a)(10), would be amended to clarify that these terms refer to the electronic book of orders on each single option series maintained by the BOX Trading Host.

B. Order Types for Complex Orders

BOX proposes to amend BOX Rule 7240(b)(4) to allow Complex Orders to be entered not only as Fill-and-Kill orders, as currently permitted, but also as Limit Orders, BOX-Top Orders, Market Orders, or Session Orders, as defined in BOX Rule 7110.[10] BOX notes that it currently permits each of these order types for single option series.[11] BOX proposes to delete a provision allowing Complex Orders to be entered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69027 (March 4, 2013), 78 FR 15093 (March 8, 2013) ("Notice").

[4] BOX Rule 7240(a) currently defines a Complex Order as a Spread Order, Straddle Order, Strangle Order, Combination Order, Stock-Option Order, Single Stock Future-Option Order, Ratio Order, Butterfly Spread Order, BOX Spread Order, and Collar Order.

[5] *See* ISE Rule 722(a)(1) (definition of Complex Order); and ISE Rule 1900(d) and BOX Rule 1500(e) (definition of Complex Trade).

[6] *See* Notice, 78 FR at 15103. Similarly, BOX proposes to delete IM–7240–1, which addresses Stock-Option Orders and SFF-Option Orders. BOX noted that it will file a proposed rule change pursuant to Section 19(b)(1) of the Act if it plans to provide for the trading of Stock-Option Orders or SSF-Option Orders on BOX in the future. *See id.*

[7] *See* BOX Rule 7240(a).

[8] BOX will assign a strategy identifier to each Strategy.

[9] BOX also proposes to add references to the "NBB" and the "NBO" to the existing definition of "NBBO" in BOX Rule 100(a)(33). NBB and NBO are proposed to be defined as the national best bid and the national best offer, respectively. *See* BOX Rule 100(a)(33). BOX believes that these definitions are necessary to support the definitions of cNBB and cNBO in BOX Rule 7240(a). *See* Notice, 78 FR at 15103.

[10] *See* BOX Rule 7420(b)(4)(i) and (ii).

[11] *See* Notice, 78 FR at 15098.

as all-or-none orders because BOX does not have all-or-none orders.[12]

As proposed, a BOX-Top Complex Orders will be executed at the best price available in the market for the total quantity available from any contra bid (offer).[13] Any residual volume left after the partial execution of a BOX-Top Complex Order will be converted automatically into a limit order on the Complex Order Book at the net Strategy price at which the original BOX-Top Complex Order was executed.[14]

BOX believes that Fill-and-Kill orders, Limit Orders, BOX-Top Orders, and Session Orders provide valuable limitations on execution price and time that may protect Participants and investors.[15] In addition, BOX notes that Session Orders reduce the risk of erroneous or stale orders on the Complex Order Book if a Participant encounters unforeseen systems issues with its connectivity to BOX.[16] BOX believes that allowing Complex Orders to be entered with these varying order types will give Participants greater control and flexibility over the manner and circumstances in which their orders may be executed, modified, or cancelled, thereby protecting investors and contributing to market efficiency.[17]

C. Priority Rules for Complex Orders

1. Complex Orders with a One-to-One Ratio

Currently, BOX Rule 7240(b)(2) provides that a Complex Order may be executed at a total net debit or credit price with another Participant's Complex Order without giving priority to bids or offers in the marketplace that are no better than the bids or offers comprising the total net debit or credit price, provided that, if one of the bids or offers in the marketplace is a Customer Limit Order, the price of at least one leg of the Complex Order must trade at a price that is better than the corresponding bid or offer in the marketplace.

BOX proposes to amend BOX Rule 7240(b)(2) to provide that, except in the case of a Complex Order with a leg ratio other than one-to-one (a "Non-Standard Strategy"), a Complex Order may be executed at a net credit or debit price with another Participant's Complex Order, provided that at least one leg of the Complex Order trades at a price that is better than the corresponding bid or offer in the marketplace by a least one minimum trading increment, as set forth in BOX Rule 7240(b)(1) (*i.e.*, one cent).[18] BOX believes that giving priority at the same price to all established interest on the BOX Book—Customer and non-Customer—for the individual legs of a Complex Order represents an improvement over the existing practice in the options markets, where leg market interest has priority over a Complex Order at the same price only if at least one of the bids and offers in the marketplace is a Customer Limit Order.[19] Because BOX will give priority to interest on the BOX Book, no resting Complex Order with a one-to-one ratio will trade before orders at the same price on the BOX Book for the component legs of the Complex Order.[20]

2. Complex Order with a Non-Standard Strategy

BOX proposes to amend Rule 7240(b)(3) to provide that a Complex Order with a Non-Standard Strategy will execute against the bids and offers on the BOX Book for the individual legs of the Strategy for all of the quantity available at the best price in a permissible ratio until the quantities remaining on the BOX Book are insufficient to execute against the Complex Order.[21] Following this execution against the interest on the BOX Book, the Complex Order may execute against another Complex Order, and the component legs of these Complex Orders may trade at prices that are equal to the corresponding prices on the BOX Book.[22]

Thus, a Complex Order with a Non-Standard Strategy would be able to execute against another Complex Order at the same price as interest on the BOX Book only after the Complex Order has executed against interest on the BOX Book to the extent possible, *i.e.*, until the remaining quantities on the BOX Book are insufficient to execute against the Complex Order. BOX notes that this process assures that interest on the BOX Book will have priority over Complex Order interest at the same price to the extent that there is sufficient quantity on the BOX Book to execute against each leg of the Complex Order with a Non-Standard Strategy.[23] BOX believes that this process could prevent a locked market on the Complex Order Book or the rejection of an incoming Complex Order that is executable against a resting Complex Order.[24] Without this process, BOX believes that otherwise executable Complex Orders would lose execution opportunities without any compensating benefit to interest on the BOX Book that is unable to interact with the incoming Complex Order.[25] BOX states, further, that the requirement to execute one leg of a Complex Order at a price better than the corresponding leg market price assumes not only that the leg market provides a price at which the Complex Order could be executed, but also that the leg market provides sufficient quantity to respect the ratio of the Complex Order.[26]

3. Required Amount of Price Improvement

BOX notes that on some options exchanges that provide auctions for Complex Orders, a Complex Order may execute against another Complex Order if one leg of the Complex Order trades at a price that is at least one cent better than customer orders in the same series. On one options exchange that has no auction for Complex Orders, a Complex Order may execute against another Complex Order if one leg of the Complex Order trades at a price that is better than Priority Customer interest in that series by at least one minimum trading increment.

Although BOX is not proposing to establish an auction for Complex Orders at this time, BOX believes that it is consistent with the protection of investors and the public interest to permit Complex Orders (other than Complex Orders on Non-Standard Strategies[27]) to execute against each other if one leg of the Complex Order trades at a price that is better than the corresponding bid or offer on the BOX Book by one cent, rather than the minimum trading increment, for several reasons. First, BOX notes that it will always execute Complex Orders first against interest on the BOX Book to the extent the Complex Order can be executed in full or in a permissible ratio by that interest. Second, BOX believes that one cent is a significant and material improvement to customers. In this regard, BOX states that various options mechanisms, such as BOX's PIP auction and the Nasdaq Options

[12] *See id.*

[13] *See* BOX Rule 7240(b)(4)(ii).

[14] *See id.*

[15] *See* Notice, 78 FR at 15106.

[16] *See id.*

[17] *See id.*

[18] *See* BOX Rule 7240(b)(2)(i). For a discussion of Non-Standard Strategies, see *infra* Section II.C.2.

[19] *See* Notice, 78 FR at 15104.

[20] *See* Notice, 78 FR at 15105.

[21] *See* BOX Rule 7240(b)(2)(ii).

[22] *See id. See* Notice, 78 FR at 15097–15098, Example 5, for an example of the execution of a Complex Order with a Non-Standard Strategy.

[23] *See* Notice, 78 FR at 15105.

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See supra* Section II.C.1. for a discussion of the execution of Complex Orders on Non-Standard Strategies (noting that the Complex Order will first execute against interest on the BOX Book to the extent possible, *i.e.*, until the remaining quantities on the BOX Book are insufficient to execute against the Complex Order, before executing against another Complex Order).

Market's ("NOM") price improving order, have been implemented because of the recognition that one cent is a significant and material improvement to customers. Third, BOX notes that there is price competition for Complex Orders on BOX driven by other features of the proposal. In this regard, BOX believes that the generation of Legging Orders (as discussed below) will provide enhanced price competition and greater integration of the BOX Book and BOX Complex Order Book. In addition, BOX notes that each leg of a Complex Order must be executed at a price that is equal to or better than the NBBO for that series. Fourth, BOX believes that permitting price improvement by one cent rather than by the minimum trading increment could permit more active Complex Order trading by allowing executions where participants may not otherwise be willing to offer better prices in larger increments. Finally, BOX notes that since the implementation of the Penny Pilot Program, many of the options instruments involved in Complex Order trading now have a minimum trading increment of one cent. As a result, BOX believes that the effect of its proposal has already been implemented in a significant number of options instruments involved in Complex Order trading.

D. Execution of Complex Orders

BOX Rule 7240(b)(3) currently states that Complex Orders will be executed without consideration of any prices that might be available on other exchanges trading the same options contracts. BOX proposes to amend BOX Rule 7240(b)(3) to refer to prices on the same Strategy. Specifically, BOX Rule 7240(b)(3), as amended, states that Complex Orders will be executed without consideration of any prices on the same Strategy that might be available on other exchanges. In addition, BOX proposes to add several provisions to BOX Rule 7240(b)(3) to describe the execution of Complex Orders on BOX. BOX Rule 7240(b)(3)(i) states that Complex Orders will be executed automatically against bids and offers on the Complex Order Book in price/time priority, provided that Complex Orders will execute against each other only after bids and offers at the same net price on the BOX Book for the individual legs of the Complex Order have been executed.[28] Complex Orders will be executed automatically against bids and offers on the BOX Book for the individual legs of the Complex Order to the extent that the Complex Order can be executed in full or in a permissible ratio by such bids and offers.[29]

BOX proposes to amend BOX Rule 7240(b)(3)(iii) to filter all inbound Complex Orders to ensure that each leg of a Complex Order is executed at a price that is equal to or better than the NBBO and the BOX BBO for each component leg of the Complex Order.[30] Under the filtering process, if an inbound Complex Order is executable on BOX, BOX will determine whether the potential execution price is equal to or better than both the cNBBO and the cBBO and, if so, BOX will execute the inbound Complex Order according to the priority described in the preceding paragraph.[31]

Under BOX Rule 7240(b)(3)(iii)(B), an inbound Complex Order that would be executable on BOX at a price that is not equal to or better than both the cNBBO and the cBBO will be exposed on the Complex Order Book for a period of up to one second at a price that is equal to the cNBB (in the case of a sell order) or the cNBO (in the case of a buy order).[32] Any executable opposite side orders received during the exposure period, including interest on the BOX Book, will execute immediately against the exposed Complex Order.[33] Any unexecuted quantity of the Complex Order remaining at the end of the exposure period will be cancelled.[34]

Under BOX Rule 7240(b)(3)(iii), an inbound Complex Limit Order that is not executable on BOX but is executable against the cNBBO will be entered on the Complex Order Book.[35] A BOX-Top Complex Order or a market Complex Order that is not executable on BOX but is executable against the cNBBO will be exposed on the Complex Order Book for a period of up to one second at a price that is equal to the cNBB (in the case of a sell order) or the cNBO (in the case of a buy order).[36] Any executable opposite side orders received during the exposure period, including interest on the BOX Book, will execute immediately against the exposed Complex Order.[37] Any unexecuted quantity of the Complex Order remaining at the end of the exposure period will be cancelled.[38] An inbound Complex Order that is not executable on BOX and is not executable against the cNBBO will be entered on the Complex Order Book.[39]

BOX believes that the requirement that each leg of a Complex Order execute at a price that is equal to or better than the BOX BBO and the NBBO for that series represents a step forward in the execution of Complex Orders and improves upon the rules of other options exchanges.[40]

E. Legging Orders

1. Generation and Removal of Legging Orders; Ranking and Display

BOX proposes to adopt BOX Rule 7240(c) relating to Legging Orders. A Legging Order, which is a Limit Order on the BOX Book that represents one side of a Complex Order, is a firm order that will be included in the BOX BBO if it is equal to, or better than, the existing BOX BBO.[41] A Legging Order will be generated only for a Complex Order with two legs and a one-to-one ratio, and only if the other leg of the Complex Order can be executed on BOX at the NBBO for the series.[42] The price of a Legging Order is the price at which the net price of the Complex Order can be achieved when the other leg of the Complex Order is executed against the best displayed bid or offer on the BOX Book at a price that is equal to or better than the NBBO.[43] Although a Legging Order may be generated at a price that is not equal to or better than the NBBO, it will be eligible for execution only after being filtered against the NBBO.[44]

Except in cases in which a Legging Order locks or crosses the opposite side NBBO, a Legging Order will be priced and ranked on the BOX Book at its generated price to buy (sell) and displayed at the minimum trading increment permitted for the series below (above) the price of the Legging Order.[45] Under BOX Rule 7240(c)(2)(i), a Legging Order that would lock or cross the opposite side NBBO will be ranked on

[28] However, as described above, a Complex Order with a Non-Standard Strategy could execute against another Complex Order at the same price as the corresponding leg market prices after the Complex Order has executed against leg market interest until the quantities remaining in the leg market are insufficient to execute against the Complex Order. *See also* BOX Rule 7240(b)(2)(ii).

[29] *See* BOX Rule 7240(b)(3)(ii). *See* Notice, 78 FR at 15095, Examples 1 and 2, for examples of the execution of Complex Orders interest on the BOX Book and on the Complex Order Book.

[30] *See* BOX Rule 7240(b)(3)(iii). *See* Notice, 78 FR 15096, Example 3, for an example of the Complex Order NBBO filtering process.

[31] *See* BOX Rule 7240(b)(3)(iii)(A). *See also* BOX Rule 7240(a)(3)(defining "cNBBO") and (1)(defining "cBBO).

[32] *See* BOX Rule 7240(b)(3)(iii)(B).

[33] *See id.*

[34] *See id.*

[35] *See* BOX Rule 7240(b)(3)(iii)(C)(I).

[36] *See* BOX Rule 7240(b)(3)(iii)(C)(II).

[37] *See id.*

[38] *See id.*

[39] *See* BOX Rule 7240(b)(3)(iii)(D).

[40] *See* Notice, 78 FR at 15104.

[41] *See* BOX Rule 7240(c)(1).

[42] *See id.*

[43] *See* BOX Rule 7240(c)(2)(i).

[44] *See* BOX Rule 7240(c)(3).

[45] *See* BOX Rule 7240(c)(1).

the BOX Book at the locking price and displayed at one minimum trading increment below the current NBO (for bids) or one minimum trading increment above the current NBB (for offers) for the applicable series ("display price sliding").[46] If the NBO increases or the NBB decreases, as applicable, the ranking and display prices of the Legging Order will be adjusted to conform with BOX Rule 7240(c)(2)(i) and will be displayed at the most aggressive permissible price.[47] The recalculation of the display and ranking prices for a Legging Order will be performed to the extent it achieves a more aggressive price, and the ranked and displayed prices of the Legging Order may be adjusted one or more times as required by changes to the prevailing NBBO.[48] A Legging Order subject to display price-sliding will retain its original generated price irrespective of the price(s) at which the Legging Order is ranked and displayed.[49] In addition, all Legging Orders that are re-ranked and re-displayed pursuant to the display-price sliding process will retain their priority, as compared to other Legging Orders subject to display-price sliding, based upon the time the Exchange received the Complex Orders from which the Legging Orders were generated.[50]

BOX proposes that, under BOX Rule 7240(b)(4) a Legging Order will be removed automatically from the BOX Book if: (i) the execution of the Legging Order would no longer achieve the net price of the Complex Order when the other leg is executed against the best displayed bid or offer on the BOX Book; (ii) the other component leg of the Complex Order cannot be executed at a price equal to the NBBO; (iii) the Complex Order is executed in full or in part; or (iv) the Complex Order is cancelled or modified.[51]

2. *Execution of Legging Orders*

BOX proposes that, under BOX Rule 7240(c), a Legging Order will be executed at its generated price and only after all other executable orders and quotes at the same price are executed in full.[52] When a Legging Order is executed, the other component leg of the Complex Order will be executed automatically against the displayed BOX BBO.[53] Executions of a Legging Order generated by multiple Complex Orders at the same price will be allocated among the Complex Orders in time priority based on the respective timestamps of the Complex Orders.[54] An incoming order that is executable against the Legging Order will be executed at the Legging Order's generated price.[55]

BOX believes that Legging Orders will provide additional execution opportunities for Complex Orders without negatively impacting investors in the regular market.[56] BOX also believes that the generation of Legging Orders may enhance execution quality for investors in the regular market by improving the price and/or size of the BOX BBO and by providing additional execution opportunities for resting orders on the BOX Book.[57]

3. Execution of a BOX-Top Order in a Non-Penny Series Against a Legging Order

BOX proposes to amend BOX Rule 7110(c)(2) to address a result that occurs when a BOX-Top Order that is not a Complex Order executes against a Legging Order in a one cent increment in a series traded in a larger increment. Under current BOX Rule 7110(c)(2), BOX-Top Orders that are entered into the BOX Book are executed at the best price available in the market for the total quantity available from any contra bid (offer), and any residual volume is automatically converted to a limit order at the price at which the BOX-Top Order was executed.[58] BOX proposes that, under BOX Rule 7110(c)(2), as amended, when a BOX-Top Order that is not a Complex Order executes against a Legging Order in a one-cent increment in a series that trades in a larger increment, the remaining BOX-Top Order quantity will be priced, ranked, and displayed on the BOX Book at the nearest increment tick permitted for the series, rounded up (down) in the case of a sell (buy) order.[59]

F. Legging Orders in the PIP

BOX proposes to amend BOX Rule 7150 to describe the treatment of Legging Orders in the PIP. Legging Orders generated during a PIP will be treated in the same manner as Unrelated Orders received during a PIP and will interact with orders in the PIP in the same manner as Unrelated Orders.[60] However, at the conclusion of a PIP, a Legging Order may execute against the PIP Order only after all other quotes and orders at the same price, including the Primary Improvement Order and any other Improvement Orders, have been executed in full, except in the case of a Primary Improvement Order with a "surrender quantity," as provided in BOX Rule 7150(g)(5).[61]

Like an Unrelated Order, a Legging Order must be executable to prematurely terminate the PIP or execute with the PIP Order.[62] The generation of a Legging Order on the same side as the PIP Order with a price that is executable against the opposite side BBO, an Improvement Order, a Legging Order, or the Primary Improvement Order, will cause the PIP to terminate early.[63] The generation of a Legging Order on the opposite side of the PIP Order that could execute against the opposite side NBBO, BBO, or a Legging Order will trade against the PIP Order at one cent better than the NBBO if the BOX BBO is equal to the NBBO, or at the NBBO if the BOX BBO is worse than the NBBO.[64]

G. Implied Order

BOX proposes to adopt BOX Rule 7240(d) to provide for the generation of Implied Orders. An Implied Order is a Complex Order at the cNBBO that is derived from orders at the BBO on the BOX Book for each component leg of a Strategy, provided that each component leg is at a price that is equal to the NBBO for that series.[65] BOX will generate Implied Orders only for Strategies with two legs and a one-to-one ratio.[66] An Implied Order will be

[46] *See* Notice, 78 FR at 15099, Example 6, for an example of the operation of the display-price sliding process.

[47] *See* BOX Rule 7240(c)(2)(ii).

[48] *See* BOX Rule 7240(c)(2)(ii) and (iii).

[49] *See* BOX Rule 7240(c)(2)(ii).

[50] *See id.*

[51] *See* BOX Rule 7240(c)(4).

[52] *See* BOX Rule 7240(c)(1) and (3). *See* Notice, 78 FR at 15100, Examples 8 and 9, for examples of the execution and priority of Legging Orders.

[53] *See* BOX Rule 7240(c)(3).

[54] *See id. See* Notice, 78 FR at 15100, Example 10, for an example of the allocation of orders when a Legging Order is generated from multiple Complex Orders.

[55] *See* BOX Rule 7240(c)(1).

[56] *See* Notice, 78 FR at 15098.

[57] *See id.*

[58] *See* Notice, 78 FR at 15101.

[59] *See id.* and BOX Rule 7110(c)(2). Example 11, 78 FR at 15101, describes the partial execution of a BOX-Top Complex Order in a non-penny series against a Legging Order.

[60] *See* Notice, 78 FR at 15107. An Unrelated Order is a non-Improvement Order entered into the BOX market during a PIP. *See* BOX Rule 7150(a).

[61] *See* BOX Rule 7150(f)(3) and Notice, 78 FR at 15101. Example 12, 78 FR at 15101–15102, provides an example of the execution of a Legging Order and a Primary Improvement Order with a surrender quantity.

[62] *See* Notice, 78 FR at 15102.

[63] *See id* and BOX Rule 7150(i). Examples 13 and 14, 78 FR at 15102, demonstrate the execution of orders when an executable Legging Order is on the same side as a PIP Order.

[64] *See* Notice, 78 FR at 15102, and BOX Rule 7150(j). Example 15, 78 FR at 15102, demonstrates the execution of orders when an executable Legging Order is on the opposite side of a PIP Order.

[65] *See* BOX Rule 7240(d)(1).

[66] *See* BOX Rule 7240(d)(3). BOX will not generate an Implied Order for a series going through NBBO exposure pursuant to BOX Rule 7130(b), or using orders in the PIP, the Facilitation Auction, or the Solicitation Auction. *See* BOX Rule 7240(d)(4).

removed when it is no longer at the cNBBO, and a new Implied Order will be generated, provided there is interest on the BOX Book to generate an Implied Order at the new cNBBO and each component leg is at a price that is equal to the NBBO for that series.[67] An Implied Order will be removed if either component leg of the order is executed, in full or in part, or cancelled.[68]

An Implied Order on the Complex Order Book will execute when a Complex Order matches the Implied Order.[69] An Implied Order has priority over a resting Complex Order at the same price, and Implied Orders at the same price will execute in time priority according to the order entry time of each component leg of the order on the BOX Book.[70]

BOX believes that the generation of Implied Orders should facilitate additional transactions and interaction between orders on the Complex Order Book and orders on the BOX Book, and will benefit market makers, traders, and retail customers by enhancing the likelihood and efficiency of trade execution.[71] BOX also believes that Implied Orders will provide additional execution opportunities for Complex Orders and interest on the BOX Book.[72] BOX believes, further, that generating Implied Orders only for Strategies with two legs and a one-for-one ratio will produce a manageable and useful set of possible Implied Orders.[73] BOX represents that it will closely monitor the generation of Implied Orders to ensure that they do not negatively impact system capacity and performance.[74]

H. Additional Changes

BOX Rule 7240(b)(1) currently provides that bids and offers on Complex Orders may be expressed in any decimal price pursuant to BOX Rule 7050 (Minimum Trading Increments), and the options leg(s) of a stock-option order may be executed in one cent increments, regardless of the minimum increments otherwise applicable to the individual option legs of the order. Current BOX Rule 7240(b)(1) also provides that Complex Orders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority as Complex Orders expressed in increments that are multiples of the minimum increment.

BOX proposes to retain the provision that provides that bids and offers on Complex Orders may be expressed in any decimal price, and the leg(s) of a Complex Order maybe executed in one cent increments, regardless of the minimum increments otherwise applicable to the individual legs of the order. In addition, BOX proposes to amend BOX Rule 7240(b)(1) in two ways. First, as discussed above, BOX proposes to delete the reference to stock-option order as BOX does not have stock-option orders. Second, BOX proposes to delete the reference to Complex Orders priced in increments that are not multiples of the minimum increment because BOX believes that this provision is unnecessary if Complex Orders may be expressed in any decimal price.

Currently BOX Rule 7240(b)(5) prohibits a Complex Order from being submitted to the PIP or submitted to BOX as a Directed Order. BOX proposes to renumber BOX Rule 7240(b)(5) as BOX Rule 7240(b)(4)(iii) but not change the prohibition under the current Rule. BOX also proposes to delete BOX Rule 7240(c), which describes a manual process for establishing a Strategy on BOX.[75]

I. Display of Legging Orders, Complex Orders, and Implied Orders in the HSVF

BOX proposes to amend BOX Rule 7130(a)(2)(iv) to provide that BOX's proprietary HSVF vendor feed will include the best-ranked Legging Order and the five best-priced Complex Orders and the best-ranked Implied Order (if any) for each Complex Order Strategy. BOX makes the HSVF available to all market participants at no charge.[76] BOX believes that adding information about Legging Orders, Complex Orders, and Implied Orders to the HSVF could improve market quality, attract order flow, and increase transparency.[77]

J. BOX Trading System Capacity

BOX represents that it has analyzed the potential for additional message traffic that could result from the proposal and has concluded that it has sufficient system capacity to handle the implementation of the proposed changes without degrading system performance.[78] BOX represents that it will closely monitor the generation of both Implied Orders and Legging Orders to ensure that they do not negatively impact system capacity and performance.[79] BOX notes that although the generation of Implied Orders and Legging Orders will require additional systems processes, BOX believes that the impact of these activities will be negligible under all but the most severe market conditions.[80] Accordingly, BOX believes that it possesses sufficient capacity to meet investor demand.[81]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[82] In particular, for the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[83] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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[67] *See* BOX Rule 7240(d)(2).

[68] *See* BOX Rule 7240(d)(5).

[69] *See* BOX Rule 7240(d)(6)(i).

[70] *See* BOX Rule 7240(d)(6)(ii) and (iii). *See* Notice, 78 FR 15096, Example 4, for an example of the generation and execution of an Implied Order.

[71] *See* Notice, 78 FR at 15105–15106.

[72] *See* Notice, 78 FR at 15106.

[73] *See id.*

[74] *See id.*

[75] According to the Exchange, BOX Rule 7240(c) will be unnecessary following the implementation of the new BOX functionality for Complex Orders that will allow Participants to create a Strategy by submitting a Complex Order for that Strategy to BOX.

[76] *See* Notice, 78 FR at 15107. *See also* BOX Rule 7130(a)(2).

[77] *See id.*

[78] *See* Notice, 78 FR at 15103.

[79] *See id.*

[80] *See* Notice, 78 FR at 15103–15104.

[81] *See* Notice, 78 FR at 15104.

[82] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[83] 15 U.S.C. 78f(b)(5).

A. Definitions

The proposal revises or adopts several defined terms used in BOX's rules. The Commission notes that BOX's new definition of Complex Order[84] is consistent with the definition of Complex Order adopted by other options exchanges.[85] The Commission also believes that eliminating references to Stock-Option Orders and Stock-SSF Orders in the definition of Complex Order could eliminate potential confusion and help to assure the accuracy of BOX's rules because BOX does not have these order types.[86] Similarly, the Commission believes that the revised definition of Central Order Book or BOX Book and the new definition of Complex Order Book are designed to clearly identify and distinguish between, respectively, the electronic book of orders on single option series and the electronic book of Complex Orders.[87] The Commission believes that the definitions of NBB and NBO would identify these terms and specify BOX's method for calculating them, *i.e.*, through information that BOX receives from OPRA.[88] In addition, BOX states that the definitions of NBB and NBO are necessary to support its definitions of cNBB and cNBO.[89] The Commission notes that BOX's definitions of cBBO, cNBBO, and Complex Order Strategy are comparable to definitions adopted by another options exchange.[90]

B. Order Types for Complex Orders

The Commission believes that amending BOX Rule 7240(b)(4) to allow Complex Orders to be entered as Limit Orders, BOX-Top Orders, Market Orders, and Session Orders could provide market participants with flexibility in trading Complex Orders on BOX and provide a means to limit execution price or time.[91] The Commission notes, in addition, that BOX currently permits each of these orders types for orders on single option series.[92] The Commission believes that deleting the reference in BOX Rule 7240(b)(4) to all-or-none orders, an order type that BOX does not have, could eliminate potential confusion and help to assure the accuracy of BOX's rules.

C. Priority Rules for Complex Orders

As described more fully above, BOX Rule 7240(b)(2) addresses the priority of Complex Orders. The Commission believes that BOX Rule 7240(b)(2)(i), which addresses the priority of Complex Orders with a one-to-one ratio, is designed to protect the priority of customer and non-customer established interest in the leg market by providing that a Complex Order with a one-to-one ratio that trades with another Complex Order must execute at a price that is better than established interest in the leg market by one penny.

The Commission also believes that BOX Rule 7240(b)(2)(ii), which applies to Complex Orders with a Non-Standard Strategy, is designed to protect the priority of orders on the BOX Book by requiring a Complex Order to execute first against interest on the BOX Book at the best price to the extent possible, and only then permitting Complex Orders to execute against each other at that price. Thus, following the executions against the best-priced interest on the BOX Book, a Complex Order would no longer be executable against interest on the BOX Book at the best price because the BOX Book would lack sufficient quantity to fill the Complex Order at a permissible ratio at that price.[93]

D. Execution of Complex Orders

The Commission notes that BOX Rule 7240(b)(3), as amended, which will allow a Complex Order to be executed without consideration of the prices on a Strategy that might be available on other exchanges, is consistent with the rules of another options exchange.[94]

BOX Rules 7240(b)(3)(i) and (ii) provide that Complex Orders will be executed in price/time priority and that, at the same net price, a Complex Order will execute first against interest on the BOX Book to the extent that the Complex Order can be executed in full or in a permissible ratio by interest on the BOX Book. The Commission notes that these provisions are designed to protect the priority of interest on the BOX Book by requiring a Complex Order to execute first against interest on the BOX Book to the extent possible before executing against another Complex Order at the same price.

Under BOX Rule 7240(b)(3)(iii), all inbound Complex Orders will be filtered to ensure that each leg of a Complex Order will be executed at a price that is equal to or better than the NBBO and the BOX BBO for each component series of the Complex Order. The Commission previously approved BOX's NBBO filtering process for orders for individual options series.[95] The Commission believes that BOX's filtering process for Complex Orders could benefit investors by ensuring that no leg of a Complex Order trades at a price that is worse than the BOX BBO and the NBBO for that series.

E. Legging Orders

1. Generation, Display, and Execution of Legging Orders

As described more fully above, BOX proposes to provide for the generation of Legging Orders on behalf of certain Complex Orders. The Commission believes that Legging Orders could facilitate the execution of Complex Orders on BOX by increasing the opportunities for Complex Orders to execute against interest in the leg market, thereby benefitting investors seeking to execute Complex Orders. In addition, the Commission believes that Legging Orders could benefit participants in the leg market by providing additional liquidity, and potentially more favorable executions, for leg market interest. The Commission notes that it previously approved a similar proposal by another options exchange to implement Legging Orders.[96]

The Commission notes that, on BOX, a Legging Order may be generated in a $0.01 increment in an options series that trades in larger increments. A Legging Order in a non-penny series will be priced and ranked on the BOX Book at its generated price to buy (sell) but will be displayed at the minimum trading increment permitted for the series below (above) the price of the Legging Order (except as may be described in Section II.E.1 above).[97] The

[84] *See* BOX Rule 7240(a)(5).

[85] *See, e.g.*, ISE Rule 721(a)(1) and CBOE Rule 6.53C(a)(1).

[86] *See* Notice, 78 FR at 15103. BOX acknowledged that it must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act if it plans to provide for the trading of Stock-Option Order or SSF-Option Orders on BOX in the future. *See id.*

[87] *See* BOX Rules 100(a)(10) and 7240(a)(6).

[88] *See* BOX Rule 100(a)(33).

[89] *See* Notice, 78 FR at 15103.

[90] *See* Phlx Rule 1080. Commentary .08(a)(ii), (iv), and (vi).

[91] *See* Notice, 78 FR at 15106.

[92] *See* Notice, 78 FR at 15106, and BOX Rule 7110.

[93] As BOX notes, orders are executable against each other only when both the price and the quantity of the orders match. *See* Notice, 78 FR at 15097.

[94] *See* CBOE Rules 6.53C(c)(ii) and (d)(v) (allowing complex orders submitted to the Complex Order Book and the Complex Order Auction to be executed without consideration to the prices of the same complex orders that might be available on other exchanges).

[95] *See* BOX Rule 7310(b)(3) and Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving File No. SR–BSE–2002–15).

[96] *See* Securities Exchange Act Release No. 66234 (January 25, 2012), 77 FR 4852 (January 31, 2012) (order approving File No. SR–ISE–2011–82).

[97] *See* BOX Rule 7240(c)(1). The Commission notes that Price Improving Orders on NOM also may be entered at a price that is smaller than the minimum price variation for the series and are rounded to the nearest minimum price variation for

Commission believes that Legging Orders in non-penny classes would allow orders to be executed at a better price than would otherwise be available—inside the disseminated best bid and offer for the security—potentially resulting in better executions for investors.

2. Display Price-Sliding Process

As described more fully above, a Legging Order that would lock or cross the opposite side NBBO will be ranked on the BOX Book at the locking price and displayed at one minimum trading increment below the current NBO (for bids) or one minimum trading increment above the current NBB (for offers) for the applicable series.[98] The ranked and displayed prices of a Legging Order subject to display-price sliding may be adjusted one or more times as required by changes to the prevailing NBBO.[99] The Commission notes that BOX's display price-sliding process for Legging Orders is consistent with the display-price sliding process of another options market, which the Commission has approved.[100] The Commission notes, further, that Rule 608(c) of Regulation NMS [101] requires BOX to comply with and enforce compliance by its members with the Options Order Protection and Locked/Crossed Markets Plan, including the requirement to avoid displaying locked and crossed markets.[102] The Commission believes that BOX's display-price sliding process for Legging Orders is designed to help assure compliance with this requirement.

3. Execution of a Legging Order Against a BOX-Top Order

Under BOX Rule 7110(c)(2), as amended, when a BOX-Top Order in a non-penny series executes in part against a Legging Order in a one-cent increment, the remaining quantity of the BOX-Top Order will be priced, ranked, and displayed on the BOX Book at the nearest increment tick permitted for the series, rounded up (down) in the case of a sell (buy) order. The Commission believes that this provision could help to preserve the intent of the sender of the BOX-Top Order to limit the price at which its order can be executed while assuring that the remaining quantity of the BOX-Top Order is priced, ranked, and displayed on the BOX Book in a permissible trading increment.

F. Legging Orders in the PIP

Although Complex Orders may not be submitted to the PIP,[103] Legging Orders may participate in the PIP. At the conclusion of a PIP, a Legging Order will cede priority to all other executable orders and quotes at the same price, including the Primary Improvement Order and any other Improvement Orders, except that a Legging Order on the same side and at the same price as the Primary Improvement Order could receive an allocation if the Primary Improvement Order includes a surrender quantity.[104] The Commission notes that the priority treatment of Legging Orders in the PIP is consistent with the priority treatment of Legging Orders outside of the PIP, which are executed only after all other executable orders and quotes at the same price are executed in full.[105]

BOX Rules 7150(i) and (j), as amended, identify circumstances in which a Legging Order, like an Unrelated Order, could cause a PIP to terminate early. BOX represents that Legging Orders generated during a PIP will be treated in the same manner as Unrelated Orders received during a PIP are treated currently and will interact with orders in the PIP in the same manner as Unrelated Orders.[106] The Commission previously has found the treatment of Unrelated Orders received during the PIP to be consistent with the Act.[107]

G. Implied Orders

As described more fully above, BOX proposes to provide for Implied Orders. The Commission believes that Implied Orders could benefit investors by providing additional execution opportunities for both Complex Orders and interest on the BOX Book. In addition, the Commission believes that Implied Orders could facilitate interaction between the Complex Order Book and the BOX Book, potentially resulting in a more competitive and efficient market, and better executions for investors.

H. Additional Changes

The proposal deletes BOX Rule 7240(c), which refers to a manual process for establishing a Strategy that will no longer be necessary following the implementation of BOX's new Complex Order functionality, and IM-7240-1, which addresses Stock-Option Orders and SSF-Option Orders that, according to BOX, do not currently trade on the Exchange. The Commission believes that deleting these provisions could help to assure the accuracy of BOX's rules and eliminate potential confusion. In addition, the Commission notes that BOX Rule 7240(b)(1), as amended, regarding the minimum trading increment for Complex Orders, is consistent with rules adopted by other options exchanges.[108]

I. Display of Legging Orders, Complex Orders, and Implied Orders in the HSVF

BOX proposes to include information regarding Legging Orders, Complex Orders, and Implied Orders in its proprietary HSVF vendor feed, which BOX makes available to all market participants at no charge.[109] The Commission believes that including this additional information in the HSVF could protect investors and the public interest by increasing the transparency of BOX's market and facilitating price discovery.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[110] that the proposed rule change (SR-BOX-2013-01), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[111]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013-09770 Filed 4-24-13; 8:45 am]

BILLING CODE 8011-01-P

display. *See* NOM Rules, Chapter VI, Section 1(e)(6). *See also* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving File Nos. SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

[98] *See* BOX Rule 7240(c)(2)(i).

[99] *See* BOX Rule 7240(c)(2)(ii).

[100] *See* BATS Rule 21.1(h) and Securities Exchange Act Release No. 61419 (January 26, 2010). 75 FR 5157 (February 1, 2010) (File No. SR-BATS-2009-31) (order approving rules governing options trading on BATS Options Exchange).

[101] 17 CFR 242.608(c).

[102] *See* Options Order Protection and Locked/Crossed National Market System Plan, Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

[103] *See* BOX Rule 7240(b)(4)(iii).

[104] *See* BOX Rule 7240(c)(2)(ii).

[105] *See* BOX Rule 7240(c)(3).

[106] *See* Notice, 78 FR at 15107.

[107] *See* Notice, 78 FR at 15107 and Securities Exchange Act Release No. 55415 (March 7, 2007), 72 FR 11411 (March 13, 2007) (order approving File No. SR-BSE-2006-03).

[108] *See, e.g.*, ISE Rule 722(b)(1) and NYSE MKT Rule 980NY, Commentary .01.

[109] *See* BOX Rule 7130(a)(2) and (a)(2)(iv) and Notice, 78 FR at 15107.

[110] 15 U.S.C. 78s(b)(2).

[111] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69420; File No. SR–C2–2013–018]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending C2 Rules Governing Letters of Guarantee and Authorization

April 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 11, 2013, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend C2 rules governing letters of guarantee and authorization. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*) and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See also* Securities Exchange Act Release No. 68879 (February 8, 2013), 78 FR 11249 (February 15, 2013) (CBOE–2012–124) (order approving a proposed rule change to amend various CBOE rules governing letters of guarantee and authorization).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Permit Holders that have trading functions on the Exchange, are required to submit a letter of guarantee or authorization [4] for that Permit Holder's trading activities on the Exchange from a Clearing Participant.[5] The purpose of this proposal is to amend various Exchange rules governing letters of guarantee and authorization to:

- Give the Exchange the ability to prevent access to its marketplace if a Permit Holder does not have an effective letter of guarantee or authorization on file with the Exchange;
- Provide that any written revocation of a letter of guarantee or authorization will be given effect as quickly as the Exchange can process it;
- Give the Exchange the ability to take any action necessary to give effect to actions by the Clearing Corporation,[6] such as restricting the activities of a Clearing Participant or suspending a Clearing Participant; and
- Automatically terminate the trading permit(s) and Permit Holder status of a Permit Holder if the Permit Holder does not have a required letter of guarantee or authorization in place for ninety consecutive days.

The changes proposed in this filing are intended to clarify and codify existing and well-established principles regarding activities permitted by Clearing Participants. While elementary, the Exchanges believes that it is important to specifically provide in its rules that a Permit Holder must have a valid letter of guarantee or authorization in order to engage in trading activities and, if one is not in place, the Exchange is permitted to prevent connectivity and access to the Exchange by that Permit Holder. Similarly, the definition of a Clearing Participant requires that a Permit Holder be admitted to membership in the OCC.[7] If the OCC restricts the activities of a Clearing Participant or terminates a Clearing Participant's membership in the OCC, that Permit Holder no longer meets the definition of a "Clearing Participant." As a result, the Exchange believes it is appropriate to codify its ability to take action, as necessary, to give effect to any restriction or suspension issued by the OCC. Finally, the Exchange is proposing to provide that if a Permit Holder does not have a required letter of guarantee or authorization in place for ninety consecutive days, the Permit Holder's status and trading permit(s) will automatically terminate (in addition to previous action by the Exchange not to allow the Permit Holder to have access and connectivity to the Exchange without a required guarantee which would occur following the revocation of a guarantee). If a Permit Holder no longer has a valid letter of guarantee and authorization, that Permit Holder presents risk to the marketplace and the Exchange believes it is appropriate to terminate trading, access and connectivity and then Permit Holder status in this situation.

The Exchange is proposing to amend C2 Rule 3.10 so that it will govern letters of guarantee and authorization (currently Rule 3.10 is limited to letters of guarantee). The Exchange is proposing to add new paragraphs (b) through (g) to Rule 3.10 to expressly provide the Exchange with remedial powers in the event the OCC restricts or suspends a Clearing Participant. The Exchange is also proposing to add new paragraph (h) to Rule 3.10 to govern the termination of Permit Holder status when a Permit Holder is without a required letter of guarantee or authorization for a ninety consecutive day period.

First, the Exchange is proposing to provide that a Permit Holder may not engage in any trading activities on the Exchange if an effective letter of guarantee or authorization required to engage in those activities is not on file with the Exchange. If a Permit Holder does not have an effective letter of guarantee or authorization on file with the Exchange, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Permit Holder.

Second, the Exchange is proposing to provide that letters of guarantee and authorization filed with the Exchange will remain in effect until a written notice of revocation has been filed with the Permit Holder Department and the revocation becomes effective or the letter of guarantee or authorization otherwise becomes invalid pursuant to Exchange rules. A written notice of

[4] A letter of guarantee is typically provided to C2 by a Clearing Participant guaranteeing any trades made by one of its TPH customers, e.g., a Market-Maker. The Commission notes that "TPH" refers to "Trading Permit Holder," which is defined in CBOE Bylaws Article I, Section 1.1(f) (the term "Trading Permit Holder" means any "individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit * * *").

[5] C2 Rule 1.1 defines "Clearing Participant" as a "Permit Holder that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the Rules of the Clearing Corporation."

[6] The Options Clearing Corporation ("OCC") is currently the only Clearing Corporation of C2.

[7] *See* C2 Rule 1.1.

revocation will become effective as soon as the Exchange is able to process the revocation. A revocation will in no way relieve a Clearing Participant of responsibility for transactions guaranteed prior to the effectiveness of the revocation.

Third, the Exchange is proposing to provide that if the OCC restricts the activities of a Clearing Participant or suspends a Clearing Participant as a Clearing Member of the OCC, the Exchange will be permitted to take action as necessary to give effect to the restriction or suspension. For example, if the OCC restricts transactions cleared by a Clearing Participant to "closing only" transactions, the Exchange will be similarly able to restrict transactions on the Exchange for clearance by that Clearing Participant as a Clearing Member of the OCC to "closing only" transactions. Similarly, if the OCC suspends a Clearing Participant, the Exchange will be similarly able to prevent access and connectivity to the Exchange by the suspended Clearing Participant.

Fourth, the Exchange is proposing to provide that if a Clearing Participant's status as a Clearing Member of the OCC is terminated or if a Clearing Participant's status as a C2 Permit Holder is terminated, all letters of guarantee and authorization on file with the Exchange from that Clearing Participant will no longer be valid effective as soon as the Exchange is able to process the invalidation of these letters of guarantee and authorization.

Fifth, the Exchange is proposing to provide that if a Clearing Participant has been suspended as a Clearing Member of the OCC or as a C2 Permit Holder, all existing letters of guarantee and authorization from that Clearing Participant will be invalid during the period of the suspension effective as soon as the Exchange is able to process the invalidation of those letters of guarantee and authorization.

Sixth, the Exchange is proposing to provide that the invalidation of a letter of guarantee or authorization will in no way relieve the Clearing Participant that issued the letter of guarantee or authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation.

Seventh, the Exchange is proposing to provide that if a Permit Holder does not have a required letter of guarantee or authorization for period of ninety consecutive days, the Permit Holder's trading permit(s) and status as a Permit Holder shall automatically be terminated.

A revocation of a letter of guarantee or authorization will not occur immediately upon receipt of the revocation by the Permit Holder Department because it takes time for the Exchange to process and effectuate the revocation. For example, there are changes that must be input into the Exchange's systems in order to systematize and effectuate a revocation. Also Exchange staff may be occupied with other matters when a revocation is received and may not immediately be able to process the revocation. Accordingly, the revocation and invalidation of letters of guarantee and authorization under proposed Rules 3.10(c) and 3.10(f) shall become effective as soon as the Exchange is able to process the revocation or invalidation. The Exchange will endeavor to process revocations and invalidations in a timely manner under the circumstances but makes no guarantees in this respect.

If a Permit Holder has a letter of guarantee or authorization that is revoked or invalidated, that Permit Holder's orders and quotes will be rejected after the revocation or invalidation after the revocation or invalidation becomes effective unless and until the Trading Permit has another effective letter of guarantee or authorization in place and on file with the Exchange. This means that a Trading Permit without an effective letter of guarantee or authorization will not be able to continue to trade on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers. issuers, brokers, or dealers.

In particular, expressly permitting the Exchange to take action as needed to give effect to a restriction or suspension issued by the OCC will protect the integrity of the Exchange's marketplace by limiting trading to only those Permit Holders with effective and unrestricted letters of guarantee and authorization. A key purpose for having Clearing Participants is to reduce the risk of market participants failing to honor executed trades. By requiring that Permit Holders have an effective and unrestricted letters of guarantee, the Exchange is advancing this purpose. Additionally, the Exchange believes that the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it will allow the Exchange to take actions to give effect to restrictions or suspensions issued by the OCC. The ability to take action is designed to prevent the execution of trades on the Exchange which may not be able to be ultimately cleared and settled if access to the Exchange's marketplace is not restricted in tandem with a restriction or suspension issued by the OCC. Also, preventing access and connectivity to the Exchange by a Permit Holder if that Permit Holder's Clearing Participant revokes the Permit Holder's letter of guarantee or authorization is beneficial to the marketplace and serves to protect investors since it prevents trading by a Permit Holder without a financial guarantee for that trading. If a Permit Holder no longer has a valid letter of guarantee or authorization, that Permit Holder presents risk to the marketplace and the Exchange believes it is appropriate to prevent access and connectivity to the Exchange by that Permit Holder in this situation. The Exchange also believes that having the ability to terminate the Permit Holder status and trading permit(s) of a Permit Holder that does not have a required letter of guarantee or authorization for ninety consecutive days is desirable since it allows the Exchange to appropriately manage and control access to its marketplace by limiting access only to those with a financial guarantee which thereby serves to protect investors by ensuring that counterparties to trades have such a guarantee.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

The Exchange believes the proposed rule change is also consistent with the Section 6(b)(7)[11] requirements that the rules of an exchange provide a fair procedure for the denial of membership to any person seeking membership therein and the prohibition or limitation by an exchange of any person with respect to access to services offered by the exchange.

Specifically, with respect to the proposed automatic termination provision when a Permit Holder does not have a required letter of guarantee or authorization for ninety consecutive days, the Exchange believes that that provision establishes a fair procedure because it strikes the appropriate balance between giving a deficient Permit Holder an adequate amount of time to cure the deficiency of not having a required letter of guarantee or authorization and allowing the Exchange to appropriately limit access to its marketplace only to those Permit Holders with a financial guarantee. Furthermore, the automatic termination provision does not prohibit or limit a previously terminated Permit Holder from seeking to gain access again to the Exchange by applying to become a Permit Holder subsequent to the termination if the Permit Holder is able to again acquire the required letter of guarantee and authorization.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believes the proposed rule change will pose any burden on intramarket competition because it is applied to all TPHs equally as all will have the same requirements with respect to letters of guarantee. Additionally, the Exchange does not believe the proposed rule change will pose any burden on intermarket competition because the proposed rule change merely allows the Exchange to clarify and codify existing and well-established principles regarding activities permitted by Clearing Participants. Therefore, there would be no further impact on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[11] 15 U.S.C. 78f(b)(7).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–C2–2013–018 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–C2–2013–018. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2013–018 and should be submitted on or before May 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09766 Filed 4–24–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69392; File No. SR–BX–2013–030]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

April 18, 2013.

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 April 9, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, Section 2 entitled "BX Options Market—Fees and Rebates" to amend various fees for routing options to away markets.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on May 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to recoup costs that the Exchange incurs for routing and executing certain orders in equity options to away markets. Today, the Exchange assesses Non-Customers a flat rate of $0.95 per contract on all Non-Customer orders routed to any away market and the Exchange assesses Customer orders a fixed fee plus the actual transaction fee dependent on the away market. Specifically, the Exchange assesses Customer orders routed to The NASDAQ Options Market LLC ("NOM") and NASDAQ OMX PHLX LLC ("PHLX") ") [sic] a fixed fee of $0.05 per contract in addition to the actual transaction fee assessed by the away market. The Exchange assesses Customer orders routed to all other away markets, except NOM and PHLX, a fixed fee of $0.11 per contract in addition to the actual transaction fee assessed by the away market, unless the away market pays a rebate, then the Routing Fee is $0.00.

The fixed fees are based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router,[3] to route orders in options listed and open for trading to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost [4] and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. For Customer orders, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis for Customer orders, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee.

The Exchange is proposing to amend the Routing Fees to all other options exchanges, except NOM and PHLX, to increase the fixed fee from $0.11 to $0.15 per contract.[5] The Exchange currently does not recoup all of its costs to route to away markets other than NOM and PHLX. As mentioned herein, the Exchange incurs costs when routing to away markets including away market transaction fees, ORFs, clearing fees, Section 31 related fees, connectivity and membership fees. The Exchange is not recouping its costs currently with the $0.11 per contract fixed fee and proposes to increase the fixed fee to $0.15 per contract.

2. Statutory Basis

BX believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Participants.

The Exchange believes that amending the Customer Routing Fee to other away markets, other than NOM and PHLX, from a fixed fee of $0.11 to $0.15 per contract, in addition to the actual transaction fee, is reasonable because the proposed fixed fee for Customer orders is an approximation of the costs the Exchange will be charged for routing orders to away markets. For example, today, NYSE MKT LLC ("Amex") does not assess a Customer transaction fee.[8] Today, the Exchange would therefore assess a Customer order that was routed to Amex an $0.11 per contract Routing Fee. The Exchange's effective per contract expenses to route to Amex which include the ORF, OCC clearing charges, Section 31 related fees, connectivity and membership fees, are not covered by the $0.11 per contract and are slightly higher than the $0.15 per contract. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing optional routing services for Customer orders because it better approximates the costs incurred by the Exchange for routing such orders. While, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including OCC clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route Customer orders to away markets. Today, the Exchange is paying a higher average cost per contract to route Customer orders to away markets, other than NOM and PHLX.

The Exchange believes that the proposed pricing for Customer Routing Fees to all other away markets, except NOM and PHLX, is equitable and not unfairly discriminatory because the Exchange would assess the same fixed fee when routing orders to an away market in addition to the away market transaction fee. The proposal would apply uniformly to all market participants when routing to an away market that pays a rebate. Market participants may submit orders to the Exchange as ineligible for routing or

[3] *See* BX Rules at Chapter VI, Section 11(e) (Order Routing).

[4] The Options Clearing Corporation ("OCC") assesses a clearing fee of $0.01 per contract side. *See* Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

[5] The Exchange is not proposing to amend Non-Customer Routing Fees or Routing Fees for Customer orders routed to NOM or PHLX.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Amex's Fee Schedule.

"DNR" to avoid Routing Fees.[9] It is important to note that when orders are routed to an away market they are routed based on price first.[10]

Further, the Exchange believes that it is reasonable to continue to not assess a Customer Routing Fee when routing to all other options exchanges, except NOM and PHLX, if the away market pays a rebate. The Exchange will continue to assess a fixed fee, which fee is being increased with this proposal, plus the actual transaction charge assessed by the away market when routing to all other options exchanges, except NOM and PHLX, unless the away market pays a rebate. The Exchange would continue to not assess a Routing Fee if the away market pays a rebate because the Exchange believes it is reasonable to retain the rebate to offset the Routing Fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange by simply not assessing a Routing Fee for Customer orders routed to away markets, other than NOM and PHLX, that pay a rebate.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to assess Customer orders that are routed to NOM and PHLX a fixed fee of $0.05 per contract and orders that are routed to other away markets, other than NOM and PHLX, a fixed fee of $0.15 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to NOM and PHLX is lower. For example, costs related to routing to PHLX are materially lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[11] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal creates a burden on intra-market competition because the Exchange is applying the same Routing Fees and credits to all market participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange will continue to assess separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[13]

The Exchange's proposal would allow the Exchange to continue to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange continues to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options and is providing those savings to all market participants. Members and member organizations may choose to mark the order as ineligible for routing to avoid incurring these fees.[14] Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.[15]

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members organizations that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[9] *See* BX Rules at Chapter VI, Section 11(e) (Order Routing).

[10] *Id.*

[11] *See* Chapter VI, Section 11 of the NASDAQ and BX Options Rules and PHLX Rule 1080(m)(iii)(A).

[12] BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of $0.30 per contract and an ISE non-customer routing fee of $0.57 per contract. *See* BATS BZX Exchange Fee Schedule.

[13] *Id.*

[14] *See supra* note 9.

[15] *See* CBOE's Fees Schedule and ISE's Fee Schedule.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–030, and should be submitted on or before May 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09711 Filed 4–24–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than June 24, 2013. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Report to United States Social Security Administration by Person Receiving Benefits for a Child or for an Adult Unable to Handle Funds; Report to United States Social Security Administration—0960–0049. Section *203 (c)* of the Social Security Act (Act) requires the Commissioner of SSA to make benefit deductions from the following categories: (1) Entitled individuals who engage in remunerative activity outside of the United States in excess of 45 hours a month and (2) beneficiaries who fail to have in their care the specified entitled child beneficiaries. SSA uses the information Form SSA–7161–OCR–SM and SSA–7162–OCR–SM provide to: (1) Determine continuing entitlement to Social Security benefits; (2) correct benefit amounts for beneficiaries outside the United States, and (3) monitor the performance of representative payees outside the United States. The respondents are individuals living outside the United States who are receiving benefits on their own (or for someone else) under title II of the Act.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–7161–OCR–SM	43,000	1	15	10,750
SSA–7162–OCR–SM	364,000	1	5	30,333
Total	407,000			41,083

2. Cost Reimbursable Research Request—20 CFR 401.165—0960–0754.

Qualified researchers need SSA administrative data for a variety of projects. To request SSA's program data for research, we require the researcher to submit a completed research application, Form SSA–9901 (How to Request SSA Program Data for Research) for SSA's evaluation. In the application, the requesting researcher provides basic project information and describes the way in which the proposed project will further SSA's mission to promote the economic security of the Nation's people through its administration of the Old Age, Survivors, and Disability Insurance programs, or the Supplemental Security Income program. SSA reviews the application, and once we approve it, the researcher signs Form SSA–9903 (SSA Agreement Regarding Conditions for Use of SSA Data), which outlines the conditions and safeguards for the research project data exchange. The researcher may only use the data for research and statistical purposes and we require them to complete Form SSA–9902 (Confidentiality Agreement). SSA recovers all expenses incurred in providing this information as part of this reimbursable service. The respondents are Federal and State

[17] 17 CFR 200.30–3(a)(12).

government agencies or their contractors, private entities, and colleges and universities.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–9901				
SSA–9902				
SA–9903	15	1	240	60

3. Government-to-Government Services Online Web site Registration; Government-to-Government Services Online Web site Account Modification/Deletion Form—20 CFR 401.45—0960–0757. The Government-to-Government Services Online (GSO) Web site allows various external organizations to submit files to a variety of SSA systems and, in some cases, receive return files. The users include State and local government agencies, other Federal agencies, and some private sector business entities. The SSA systems that process data transferred via GSO include, but are not limited to, systems responsible for disability processing and benefit determination or termination. SSA uses the information on Form SSA–159 (GSO Web site Registration Form) to maintain the identity of the requestor within GSO. The organization can also modify its online account (e.g., address change) by completing Form SSA–160 (GSO Web site Account Modification/Deletion Form). Respondents are State and local government agencies, and private sector businesses.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–159	925	1	15	231
SSA–160	2,500	1	15	625
Total	3,425			856

Dated: April 22, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–09752 Filed 4–24–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8292]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Dead Sea Scrolls: Life and Faith in Ancient Times" Formerly Titled "The Dead Sea Scrolls: Life and Faith in Biblical Times"

ACTION: Notice, correction.

SUMMARY: On October 12, 2011, notice was published on page 63341 of the **Federal Register** (volume 76, number 197) of determinations made by the Department of State pertaining to the exhibition "The Dead Sea Scrolls: Life and Faith in Biblical Times." The referenced notice was corrected on October 19, 2012, by a notice published on pages 64373–64374 of the **Federal Register** (volume 77, number 203) to change the exhibition name to "The Dead Sea Scrolls: Life and Faith in Ancient Times" and to include additional objects as part of the exhibition. The October 19, 2012, notice referenced above was corrected on March 15, 2013, by a notice published on page 16565 of the **Federal Register** (volume 78, number 51) to include an additional object as part of the exhibition. Today's notice is being issued to include additional objects in the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the additional objects to be included in the exhibition "The Dead Sea Scrolls: Life and Faith in Ancient Times," imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the additional exhibit objects at the Museum of Science, Boston, MA, from on or about May 18, 2013, until on or about October 13, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 22, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–09844 Filed 4–24–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8291]

In the Matter of the Review of the Designation of the Abu Sayyaf Group (ASG) (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2008 designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: April 17, 2013.

John F. Kerry,

Secretary of State, U.S. Department of State.

[FR Doc. 2013–09842 Filed 4–24–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on May 16, 2013, from 12:00 noon to 3:00 p.m., Eastern Daylight Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–820–7831, passcode, 908048 to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: April 12, 2013.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2013–09914 Filed 4–23–13; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0032; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 2005–2007 BMW 5 Series Passenger Cars Manufactured Before September 1, 2006 are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2005–2007 BMW 5 Series passenger cars manufactured before September 1, 2006 that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of 2005–2007 BMW 5 Series passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 28, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and 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, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

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 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C.

30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC. of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether nonconforming 2005–2007 BMW 5 Series passenger cars manufactured before September 1, 2006 are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2005–2007 BMW 5 Series passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2005–2007 BMW 5 Series passenger cars manufactured before September 1, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2005–2007 BMW 5 Series passenger cars manufactured before September 1, 2006, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2005–2007 BMW 5 Series passenger cars manufactured before September 1, 2006 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* replacement of the instrument cluster with a U.S.-model component and reprogramming the vehicle computer to operate the necessary safety systems.

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment:* replacement of the headlamps and tail lamps (which include side marker lights) with U.S.-model components and installing the U.S.-model high-mounted stop light assembly.

Standard No. 110 *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection and Rollaway Prevention:* reprogramming the vehicle computer to activate the systems.

Standard No. 118 *Power-operated Window, Partition, And Roof Panel Systems:* reprogramming the vehicle computer to conform to the standard if the vehicle does not already conform.

Standard No. 208 *Occupant Crash Protection:* reprogramming the vehicle computer to activate the audible warning system and installation of U.S.-model airbags, sensors, front passenger and rear seat belts, child seat support mount, rear window shelf, and instrument panel support tube.

Standard No. 209 *Seat Belt Assemblies:* replacement of front passenger and rear seatbelts with U.S.-model components.

Standard No. 225 *Child Restraint Anchorage Systems:* installation of child seat support mounts.

Standard No. 301 *Fuel System Integrity:* installation of a U.S.-model evaporative system with rollover and check valve.

Standard No. 401 *Interior Trunk Release:* installation of U.S.-model interior trunk release components.

The petitioner states that the bumper carriers, bumper shocks, and deformation elements will be replaced to meet the requirements of the Bumper Standard at 49 CFR 581.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: April 15, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–09728 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0035; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2011 Thule 3008BL Boat Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2011 Thule 3008BL boat trailers that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The closing date for comments on the petition is May 28, 2013.

ADDRESSES: Comments should refer to the docket and notice numbers above and 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, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

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 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*.

Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle, including a trailer, that was not originally manufactured to conform to all applicable FMVSS, and has no substantially similar U.S.-certified counterpart, shall be refused admission into the United States unless NHTSA has decided that the motor vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US Specs of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether nonconforming 2011 Thule 3008BL boat trailers are eligible for importation into the United States. US Specs believes these vehicles are capable of being modified to meet all applicable FMVSS.

US Specs submitted information with its petition intended to demonstrate that 2011 Thule 3008BL boat trailers are capable of being altered to comply with all standards to which they were not originally manufactured to conform.

The petitioner contends that the nonconforming 2011 Thule 3008BL boat trailers are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of conforming tail lamps, license plate lamps, rear side marker lamps, front and rear side marker lamps, rear identification lamps, and rear clearance lamps, as necessary to achieve compliance with the standard.

Standard No. 119 *New Pneumatic Tires for Vehicles other than Passenger Cars:* installation of tires meeting the vehicle's gross vehicle and gross axle weight ratings (GVWR and GAWR) and other requirements of the standard if the vehicle is not already so equipped.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* installation of a tire information placard and inspection and replacement of any nonconforming rims with ones conforming to the standard.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.95 and 501.8.

Issued on: April 15, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–09724 Filed 4–24–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35731]

Ballard Terminal Railroad Company, L.L.C.—Acquisition and Operation Exemption—Woodinville Subdivision

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption; request for comments.

SUMMARY: On April 2, 2013, Ballard Terminal Railroad Company, L.L.C. (Ballard), a Class III rail carrier, filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10902 to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, and the physical trackage assets on a line of railroad currently owned by the City of Kirkland (City) and the Port of Seattle (Port) in King County, Wash. (the Line), and currently subject to railbanking/interim trail use under the National Trails System Act, 16 U.S.C. 1247(d). Ballard also seeks the right to provide common carrier rail service over the Line, and requests that the Board order the transfer of all the rail materials to Ballard at their net liquidation value. Ballard states that it has no objection to shared use of the right-of-way as both a rail line and a trail. The Line consists of a portion of the former BNSF Railway Company (BNSF) Woodinville Subdivision extending between milepost 23.8 at Woodinville, Wash., and milepost 12.6 at Bellevue, Wash.[1] The petition for

[1] This segment was the subject of an abandonment proceeding and NITU in *BNSF*

Continued

exemption was filed concurrently with a Ballard petition to partially vacate the NITU issued in Docket No. AB 6 (Sub-No. 465X) for the Woodinville Subdivision (extending from milepost 23.8 to milepost 11.25). That NITU permitted railbanking/interim trail use negotiations under 16 U.S.C. 1247(d).[2] The Board seeks comments from interested persons on Ballard's request to resume rail service and partially vacate the NITU.

DATES: Written comments must be filed with the Board by June 18, 2013. Replies must be filed by July 18, 2013.[3]

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. FD 35731, 395 E Street SW., Washington, DC 20423–0001.

In addition, send one copy of any comments to: (1) Myles L. Tobin, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832; (2) Craig Watson, Port of Seattle, Pier 69, P.O. Box 1209, Seattle, WA 98111; (3) Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue NW., Washington, DC 20036; and (4) all other parties of record to this proceeding.

FOR FURTHER INFORMATION CONTACT: Marc Lerner at 202–245–0390. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 2, 2013, Ballard filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10902 to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, and the physical trackage assets of the Line, for a segment of the former BNSF Woodinville Subdivision. This segment is currently subject to an interim trail use/railbanking agreement between BNSF and King County, a political subdivision of the State of Washington. The Port owns the real estate associated with the Line, which it acquired from BNSF;[4] the Port subsequently conveyed a portion of the Line to the City. In *King County, Wash.—Acquisition Exemption—BNSF Railway Company*, FD 35148 (STB served Sept. 18, 2009), the Board granted a request by King County for exemption from 49 U.S.C. 10901 to acquire BNSF's rights and obligations, including the right to reinstate rail service in the future.

Ballard's petition presents this issue: under what circumstances will the Board grant a carrier's request to vacate a NITU to permit reactivation of rail service when the petitioning carrier does not own or have any other interest in the right-of-way. An interim trail use arrangement is subject to being cut off at any time by the reinstitution of service. 16 U.S.C. 1247(d). Here, the abandoning railroad (BNSF) has transferred its rights and obligations, including the right to reinstate rail service, to King County (which is also the trail sponsor), and a different carrier, Ballard, seeks to reinstitute service.

Ballard submits letters from two shippers that support the reinstitution of rail service over the Line. CalPortland, a building materials and construction services provider, states that it desires to use the Line to receive hundreds of thousands of cubic yards per year of construction materials for upcoming road projects. Wolford Trucking & Demolition, Inc. (Wolford), a demolition and trucking services provider, states that it plans to use the Line to ship an estimated three million cubic yards of excavated materials, building demolition waste, and roadway grading spoils over the next several years. Ballard estimates that CalPortland and Wolford's use of the Line would translate to approximately 50,000 carloads of freight.[5]

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 17, 2014.

Decided: April 19, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–09760 Filed 4–24–13; 8:45 am]

BILLING CODE 4915–01–P

Railway Company—Abandonment Exemption—in King County, Wash., AB 6 (Sub-No. 465X).

[2] In a related matter, Ballard simultaneously filed a verified notice of exemption under 49 CFR 1150.41 to lease from Eastside Community Rail, LLC and to operate a 14.45-mile line of railroad between mileposts 23.8 and 38.25 that is adjacent to the Line at issue here. *Ballard Terminal Railroad Company, L.L.C.—Lease Exemption—Line of Eastside Community Rail, LLC*, FD 35730 (STB served Apr. 18, 2013).

[3] On April 12, 2013, King County, the City, and Central Puget Sound Regional Transit Authority (collectively, Movants) jointly filed a motion to extend the time to respond to Ballard's petitions to partially vacate the NITU and for exemption, from April 22, 2013, to June 21, 2013. On April 17, 2013, Ballard filed a reply to the motion, objecting to the requested extension of time unless it is coupled with a condition that the City not remove the track and other rail assets on the 5.75-mile portion of the Line the City owns, until such time as the Board rules on Ballard's pending petitions. On April 18, 2013, Movants filed a motion for leave to file a reply to Ballard's reply. Regarding the motion to extend, pursuant to this notice and request for comments, the Board is initiating a proceeding and establishing a procedural schedule for comments. Movants' motion to extend the time to respond will therefore be denied as moot. The matter of the trackage removal is already pending in the U.S. District Court for the Western District of Washington on Ballard's motion for temporary restraining order, which is scheduled to be heard on May 3, 2013.

[4] *The Port of Seattle—Acquisition Exemption—Certain Assets of BNSF Ry.*, FD 35128 (STB served June 20, 2008).

[5] Ballard submits three additional letters generally in support of an upgraded Eastside Rail Corridor: an open letter from the Snohomish County Executive Director supporting multiple purpose use of the Eastside Rail Corridor, including freight service; a letter to the Kirkland City Council from the Mayor of Woodinville requesting that the City delay the removal of the subject tracks until the Eastside Rail Corridor Regional Advisory Council presents its recommendations in Summer 2013; and a letter to Washington State Senator Rosemary McAuliffe from the Mayor of Snohomish reiterating a request for funding needed to upgrade the Eastside Rail Corridor.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 22, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 28, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire

information collection request maybe found at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Number: 1545–0142.
Type of Review: Extension without change of a currently approved collection.
Title: Underpayment of Estimated Tax by Corporations.
Form: 2220.
Abstract: Form 2220 is used by corporations to determine whether they are subject to the penalty for underpayment of estimated tax and if so, the amount of the penalty. The IRS uses Form 2220 to determine if the penalty was correctly computed.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 24,206,448.

OMB Number: 1545–0155.
Type of Review: Extension without change of a currently approved collection.
Title: Investment Credit.
Form: 3468.
Abstract: Taxpayers are allowed a credit against their income tax for certain expenses they incur for their trades or businesses. Form 3468 is used to compute this investment tax credit. The information collect is used by the IRS to verify that the credit has been correctly computed.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 530,937.

OMB Number: 1545–0790.
Type of Review: Extension without change of a currently approved collection.
Title: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
Form: 8082.
Abstract: IRC sections 6222 and 6227 require partners to notify IRS by filing Form 8082 when they (1) treat partnership items inconsistent with the partnerships' treatment (6222), and (2) change previously reported partnership items (6227). Sections 6244 and 860F extend this requirement to shareholders of S corporations and residuals of REMICs. Also section 6241 and 6034A(c) extend this requirement to partners in electing large partnerships and beneficiaries of estates and trusts.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 51,024.

OMB Number: 1545–1034.
Type of Review: Extension without change of a currently approved collection.
Title: Passive Activity Credit Limitations.
Form: 8582–CR.
Abstract: Under section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed. Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the tax return.
Affected Public: Individuals and Households.
Estimated Annual Burden Hours: 2,370,600.

OMB Number: 1545–1145.
Type of Review: Extension without change of a currently approved collection.
Title: Generation-Skipping Transfer Tax Return for Terminations.
Form: 706–GS(T).
Abstract: Form 706–GS(T) is used by trustees to compute and report the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Affected Public: Individuals and Households.
Estimated Annual Burden Hours: 684.

OMB Number: 1545–1447.
Type of Review: Extension without change of a currently approved collection.
Title: CO–46–94 (TD 8594—Final) Losses on Small Business Stock.
Abstract: Section 1.1244(e)–1(b) of the regulation requires that a taxpayer claiming an ordinary loss with respect to section 1244 stock must have records sufficient to establish that the taxpayer satisfies the requirements of section 1244 and is entitled to the loss. The records are necessary to enable the Service examiner to verify that the stock qualifies as section 1244 stock and to determine whether the taxpayer is entitled to the loss.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 2,000.

OMB Number: 1545–1550.
Type of Review: Extension without change of a currently approved collection.
Title: Notice 97–45, Highly Compensated Employee Definition.
Abstract: This notice provides guidance on the definition of a highly compensated employee within the meaning of section 414(q) of the Internal Revenue Code as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii).
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 65,605.

OMB Number: 1545–1558.
Type of Review: Extension without change of a currently approved collection.
Title: Rev. Proc. 97–43, Procedures for Electing Out of Exemptions under Section 1.475(c)–1; and Rev. Ruling 97–39, Mark-to-Market Accounting Method for Dealers in Securities.
Abstract: Rev. Proc. 97–43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under section 1.475(c)–1, subject to specified terms and conditions. Rev. Ruling 97–39 provides taxpayers additional mark-to-market guidance in a question and answer format.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 1,000.

OMB Number: 1545–1639.
Type of Review: Extension without change of a currently approved collection.
Title: TD 8936—Definition of Contribution in Aid of Construction under Section 118(c).
Abstract: The regulations provide guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 300.

OMB Number: 1545–1851.
Type of Review: Extension without change of a currently approved collection.
Title: TD 9083—Golden Parachute Payments (REG–124312–02).
Abstract: These regulations deny a deduction for excess parachute payments. A parachute payment is a payment in the nature of compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met (such as shareholder approval and disclosure requirements).
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 12,000.

OMB Number: 1545–2170.

Type of Review: Extension without change of a currently approved collection.

Title: Cyber Assistance Program (Authorized Cyber Assistant Host Application).

Abstract: The form is used by a business to apply to become an Authorized Cyber Assistant Host. Information on this form will be used to assist in determining whether the applicant meets the qualifications to become a Cyber Assistant Host. Cyber Assistant is a software program that assists in the preparation of Form 1023, Application for Recognition of Exemption, under Section 501(c)(3).

Affected Public: Private Sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Annual Burden Hours: 200.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–09774 Filed 4–24–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of 1 Individual Designated Pursuant to Executive Order 13572

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the name of 1 individual whose property and interests in property are blocked pursuant to Executive Order 13572 of April 29, 2011, "Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria" from the list of Specially Designated Nationals and Blocked Persons ("SDN List").

DATES: The removal of this individual from the SDN List is effective as of Thursday, April 18, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On April 29, 2011, the President issued Executive Order 13572, "Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria," (the "Order") pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President expanded the scope of the national emergency declared in Executive Order 13338 of May 11, 2004. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13572.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

The following designation is removed from the SDN List:

Individual

AL-KUZBARI, Nabil Rafik (a.k.a. AL-KOUZBARI, Nabil; a.k.a. AL-KUZBARI, Nabil; a.k.a. AL-KUZBARI, Nabil Rafiq; a.k.a. KUSBARI, Nabil; a.k.a. KUZBARI, Ahmad; a.k.a. KUZBARI, Ahmad Nabil; a.k.a. KUZBARI, Nabil R.); DOB 20 Sep 1936; POB Damascus, Syria; citizen Syria; alt. citizen Austria; Passport P3002721 (Austria) (individual) [SYRIA].

The removal of this individual from the SDN List is effective as of Thursday, April 18, 2013. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now blocked.

Dated: Thursday, April 18, 2013.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–09793 Filed 4–24–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0117]

Proposed Information Collection (Inquiry Concerning Applicant for Employment) Activity; Comment Request

AGENCY: Office of Human Resources and Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Human Resources and Administration (HRA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's suitability and qualification for employment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 24, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Jean Hayes, Office of Human Resources Management (05), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *jean.hayes@va.gov.* Please refer to "OMB Control No. 2900–0117" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Jean Hayes at (202) 461–7863 and by fax (202) 273–0733.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, HRA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of HRA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Inquiry Concerning Applicant for Employment, VA Form Letter 5–127.

OMB Control Number: 2900–0117.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form Letter 5–127 is used to verify an applicant qualification for employment at VA. The information is obtained from individuals who have knowledge of the applicant's past work record, performance, and character.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 3,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 12,500.

Dated: April 19, 2013.

By direction of the Secretary.

Crystal Rennie,

Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–09812 Filed 4–24–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0750]

Proposed Information Collection (Ethics Consultation Feedback Tool (ECFT)) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to improve the process of ethics consultation service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 24, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0750" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or Fax (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Ethics Consultation Feedback Tool (ECFT), VA Form 10–0502.

OMB Control Number: 2900–0750.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 10–0502 will be used to collect data from patients and family members about their experience during the Ethics Consultation Service. VA will be used the data to improve the process of ethics consultation (i.e., how ethics consultation is being performed) as well as its outcomes (i.e., how ethics consultation affects participants and the facility).

Affected Public: Individuals or households.

Estimated Annual Burden: 100.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: April 19, 2013.

By direction of the Secretary.

Crystal Rennie,

Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–09811 Filed 4–24–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Proposed Information Collection (Marital Status Questionnaire) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether surviving spouses are entitled to dependency and indemnity compensation (DIC) benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 24, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0495" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility;

(2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Marital Status Questionnaire, VA Form 21–0537.

OMB Control Number: 2900–0495.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0537 is used to confirm the marital status of a surviving spouse receiving dependency and indemnity compensation benefits (DIC). If a surviving spouse remarries, he or she is no longer entitled to DIC unless the marriage began after age 57 or has been terminated.

Affected Public: Individuals or households.

Estimated Annual Burden: 189 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,270.

Dated: April 19, 2013.

By direction of the Secretary.

Crystal Rennie,

Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–09809 Filed 4–24–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0752]

Proposed Information Collection (uSPEQ Consumer Survey Experience (Rehabilitation)) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to measure veterans' experience in VA's rehabilitation programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 24, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0752" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or Fax (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: uSPEQ Consumer Survey Experience (Rehabilitation).

OMB Control Number: 2900–0752.

Type of Review: Extension of a currently approved collection.

Abstract: uSPEQ (pronounced *you speak*) survey will be used to gather input from veterans regarding their satisfaction with VA's rehabilitation programs. VA will use the data collected to continue quality improvement, informed programmatic development, and to identify rehabilitation program strengths and weaknesses.

Affected Public: Individuals and Households.

Estimated Annual Burden: 32,000 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 384,000.

Dated: April 19, 2013.

By direction of the Secretary.

Crystal Rennie,

Clearance officer, Department of Veterans Affairs.

[FR Doc. 2013–09813 Filed 4–24–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Thursday,
No. 80 April 25, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for the Sierra Nevada Yellow-Legged Frog and the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and Threatened Status for the Yosemite Toad; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0100; 4500030113]

RIN 1018–AZ21

Endangered and Threatened Wildlife and Plants; Endangered Status for the Sierra Nevada Yellow-Legged Frog and the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and Threatened Status for the Yosemite Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the Sierra Nevada yellow-legged frog and the northern distinct population segment (DPS) (populations that occur north of the Tehachapi Mountains) of the mountain yellow-legged frog as endangered species, and the Yosemite toad as a threatened species under the Endangered Species Act of 1973, as amended (Act). The effect of this regulation would be to add the species to the List of Endangered and Threatened Wildlife under the Act.

DATES: We will accept comments received or postmarked on or before June 24, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by June 10, 2013.

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 Search box, enter Docket No. FWS–R8–ES–2012–0100, 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 "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0100; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Information Requested below for more information).

FOR FURTHER INFORMATION CONTACT: Jan Knight, Acting Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento CA 95825; by telephone 916–414–6600; or by facsimile 916–414–6712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

This document consists of: a proposed rule to list the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog as endangered, and to list the Yosemite toad as threatened.

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within one year. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule proposes the listing of the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog as endangered, and to list the Yosemite toad as threatened.

- We are proposing to list the Sierra Nevada yellow-legged frog as endangered under the Endangered Species Act.
- We are proposing to list the northern DPS of the mountain yellow-legged frog as endangered under the Endangered Species Act.
- We are proposing to list the Yosemite toad as threatened under the Endangered Species Act.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We reviewed all available scientific and commercial information pertaining to the five threat factors in our evaluation of each species.

We have made the following findings related to these criteria:

Sierra Nevada Yellow-Legged Frog (Rana Sierrae)

The Sierra Nevada yellow-legged frog is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats to its continued existence. These include habitat degradation and fragmentation, predation and disease, climate change, inadequate regulatory protections, and the interaction of these various stressors impacting small remnant populations. There has been a rangewide reduction in abundance and geographic extent of surviving populations of frogs following decades of fish stocking, habitat fragmentation, and most recently a disease epidemic. Surviving populations are smaller and more isolated, and recruitment in disease-infested populations is much reduced relative to historic norms. This combination of population stressors makes persistence of the species precarious throughout the currently occupied range in the Sierra Nevada.

Northern Distinct Population Segment of the Mountain Yellow-Legged Frog (Rana Muscosa)

Populations within the southern DPS of the mountain yellow-legged frog inhabiting the Transverse Ranges of Southern California are currently listed as an endangered species. The northern DPS of the mountain yellow-legged frog is presently in danger of extinction throughout its range within the Sierra Nevada, based on the immediacy, severity, and scope of the threats to its continued existence. These include habitat degradation and fragmentation, predation and disease, climate change, inadequate regulatory protections, and the interaction of these various stressors impacting small remnant populations. There has been a rangewide reduction in abundance and geographic extent of surviving populations of frogs following decades of fish stocking, habitat fragmentation, and most recently a disease epidemic. Surviving populations are smaller and more isolated, and recruitment in disease-infested populations is much reduced relative to historic norms. This combination of population stressors makes persistence of the species precarious throughout the Sierra Nevada range of the mountain yellow-legged frog.

The northern DPS of the mountain yellow-legged frog has different habitat, requires different management, and has

different primary constituent elements than the already listed southern DPS . For these reasons, we have proposed a separate DPS for the northern population in this rule. However, if we finalize this rule, the entire range of the mountain yellow-legged frog may be listed as endangered. We request public input on whether we should retain the northern and southern DPS's or combine the two into one listed species in the final rule. Thus, we are giving notice that we may combine the two DPS's into one listed species if we finalize this proposed rule.

Yosemite Toad (Anaxyrus Canorus)

The Yosemite toad is likely to become endangered throughout its range within the foreseeable future, based on the immediacy, severity, and scope of the threats to its continued existence. These include habitat loss associated with degradation of meadow hydrology following stream incision consequent to the cumulative effects of historic land management activities, notably livestock grazing, and also the anticipated hydrologic effects upon habitat from climate change. We also find that the Yosemite toad is likely to become endangered through the direct effects of climate change impacting small remnant populations, likely compounded with the cumulative effect of other threat factors (such as disease).

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species, and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species, and ongoing conservation measures for these species and their habitats.

(4) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act 16 U.S.C. 1531 et seq.), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(5) Land use designations and current or planned activities in the areas occupied by the species, and possible impacts of these activities on these species.

(6) Information on the projected and reasonably likely impacts of climate change on the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad.

(7) Input on whether we should retain the northern and southern DPS's of the mountain yellow-legged frog in the final rule or should we combine the two DPS's into one listed entity for the species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

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, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Mountain Yellow-Legged Frog

In February 2000, we received a petition from the Center for Biological Diversity and Pacific Rivers Council to list the Sierra Nevada population of the mountain yellow-legged frog (*Rana muscosa*). The petition stated that this population met the criteria in our DPS Policy and that it should be listed as endangered. On October 12, 2000, we published a 90-day finding on that petition in the **Federal Register** (65 FR 60603), concluding that the petition presented substantial scientific or commercial information to indicate that the listing of the Sierra Nevada population of the mountain yellow-legged frog may be warranted, and we concurrently requested information and data regarding the species. On January 16, 2003, we published a 12-month petition finding in the **Federal Register** that listing was warranted but precluded (68 FR 2283). This finding was in accordance with a court order requiring us to complete a finding by January 10, 2003 (*Center for Biological Diversity* v. *Norton*, No. 01–2106 (N. D. Cal. Dec. 12, 2001)). Upon publication of the finding, we added the Sierra Nevada DPS of the mountain yellow-legged frog to our list of species that are candidates for listing.

The Center for Biological Diversity and Pacific Rivers Council challenged our finding that listing was warranted but precluded, and sought to compel the Service to proceed with listing. On June 21, 2004, the U.S. District Court for the Eastern District of California granted summary judgment in favor of the United States (*Center for Biological Diversity* v. *Norton*, No. 03–01758 (E.D.

Cal. June 21, 2004)). In response to an appeal of the District Court decision, on October 18, 2006, the 9th Circuit Court of Appeals reversed and remanded the lower Court's judgment, concluding that the 12-month finding we published on January 16, 2003, did not meet the requirements of section 4(b)(3)(B) of the Act.

We addressed the 9th Circuit Court's remand by amending our January 16, 2003, warranted-but-precluded finding to include a description of our underlying rationale and an evaluation of the data demonstrating why listing the Sierra Nevada DPS of the mountain yellow-legged frog was precluded from listing. We further described the expeditious progress we had made toward adding qualified species to the Federal Lists of Endangered and Threatened Wildlife and Plants at the time. The revised 12-month finding was published on June 25, 2007 (72 FR 34657), reiterating a warranted-but-precluded finding, and maintaining the Sierra Nevada DPS of the mountain yellow-legged frog as a candidate for listing under the Act. In the intervening time, this entity has been taxonomically split (See Background section in Endangered Status For Sierra Nevada Yellow-legged Frog and the Northern DPS of the Mountain Yellow-legged Frog).

Candidate assessments for the Sierra Nevada DPS of the mountain yellow-legged frog have been prepared annually since the 2007 12-month finding (2008, 73 FR 75176; 2009, 74 FR 57804, corrected 75 FR 8293; 2010, 75 FR 69222; 2011, 76 FR 66370). The taxonomic split was officially recognized in the 2011 Candidate Assessment (76 FR 66370), where we noted that we would include the change in the upcoming proposed rule. Accordingly, in this proposed rule, we address two separate species within the mountain yellow-legged frog "species complex": *Rana muscosa* and *Rana sierrae*.

Yosemite Toad

In April 2000, we received a petition from the Center for Biological Diversity and Pacific Rivers Council to list the Yosemite toad as endangered under the Act, and to designate critical habitat concurrent with listing. On October 12, 2000, the Service published a 90-day finding (65 FR 60607) concluding that the petition presented substantial scientific or commercial information to indicate that the listing of the Yosemite toad may be warranted, and we concurrently requested information and data regarding the species. On December 10, 2002, we published a 12-month finding (67 FR 75834), concluding that the Yosemite toad warranted protection under the Act; however, budgetary constraints precluded the Service from listing the Yosemite toad as endangered or threatened at the time. This finding was in accordance with a court order requiring us to complete a finding by November 30, 2002 (*Center for Biological Diversity* v. *Norton*, No. 01–2106 (N. D. Cal. Dec. 12, 2001)).

Candidate assessments for the Yosemite toad have been prepared annually since the 2002 12-month finding (2004, 69 FR 24876; 2005, 70 FR 24870; 2006, 71 FR 53756; 2007, 72 FR 69034; 2008, 73 FR 75176; 2009, 74 FR 57804; 2010, 75 FR 69222; 2011, 76 FR 66370).

Status for Sierra Nevada Yellow-Legged Frog and the Northern DPS of the Mountain Yellow-Legged Frog

Background

In this section of the proposed rule, it is our intent to discuss only those topics directly relevant to the proposed listing of the Sierra Nevada yellow-legged frog as endangered and the proposed listing of the northern DPS of the mountain yellow-legged frog as endangered.

Taxonomy

Mountain yellow-legged frogs were once thought to be a subspecies of the foothill yellow-legged frog, *Rana boylii* (Camp 1917, pp. 118–123), and were therefore designated as *R. b. sierrae* in the Sierra Nevada and *R. b. muscosa* in southern California. At that time, it was presumed that yellow-legged frog populations from southern California through northern California were a single species. Additional morphological data supported the classification of the two subspecies separate from *R. boylii* as the species *R. muscosa* (Zweifel 1955, pp. 210–240). Macey *et al.* (2001, p. 141) conducted a phylogenetic analysis of mitochondrial deoxyribonucleic acid (DNA) sequences of the mountain yellow-legged frog and concluded that there were two major genetic lineages (and four groups), with populations in the Sierra Nevada falling into three distinct groups, the fourth being the southern California population.

Based on mitochondrial DNA, morphological information, and acoustic studies, Vredenburg *et al.* (2007, p. 371) recently recognized two distinct species of mountain yellow-legged frog in the Sierra Nevada, *Rana muscosa* and *R. sierrae*. This taxonomic distinction was subsequently adopted by the American Society of Ichthyologists and Herpetologists, the Herpetologists' League, and the Society for the Study of Amphibians and Reptiles (Crother *et al.* 2008, p. 11). The Vredenburg study determined that *R. sierrae* occurs in the Sierra Nevada north of the Kern River watershed and over the eastern crest of the Sierra Nevada into Inyo County at its most southern extent, and that *R. muscosa* occurs in the southern portion of the Sierra Nevada within the Kern River watershed to the west of the Sierra Nevada crest (along with those populations inhabiting southern California) (Vredenburg *et al.* 2007, p. 361).

Macey *et al.* (2001, p. 140) suggested that the initial divergence between the Sierra Nevada yellow-legged frog and the mountain yellow-legged frog occurred 2.2 million years before present (mybp). The biogeographic pattern of genetic divergence as detected in the mountain yellow-legged frog complex of the Sierra Nevada has also been observed in four other reptiles and amphibians in this area, suggesting that a common event fragmented their ranges (Macey *et al.* 2001, p. 140).

We identify *Rana sierrae* in this proposed rule as the Sierra Nevada yellow-legged frog, and refer to the Sierra Nevada populations of *R. muscosa* as the northern range of the mountain yellow-legged frog. Together, these species may be termed the "mountain yellow-legged frog complex." Figure 1 shows the newly recognized species split within their historical ranges as determined by Knapp (unpubl. data).

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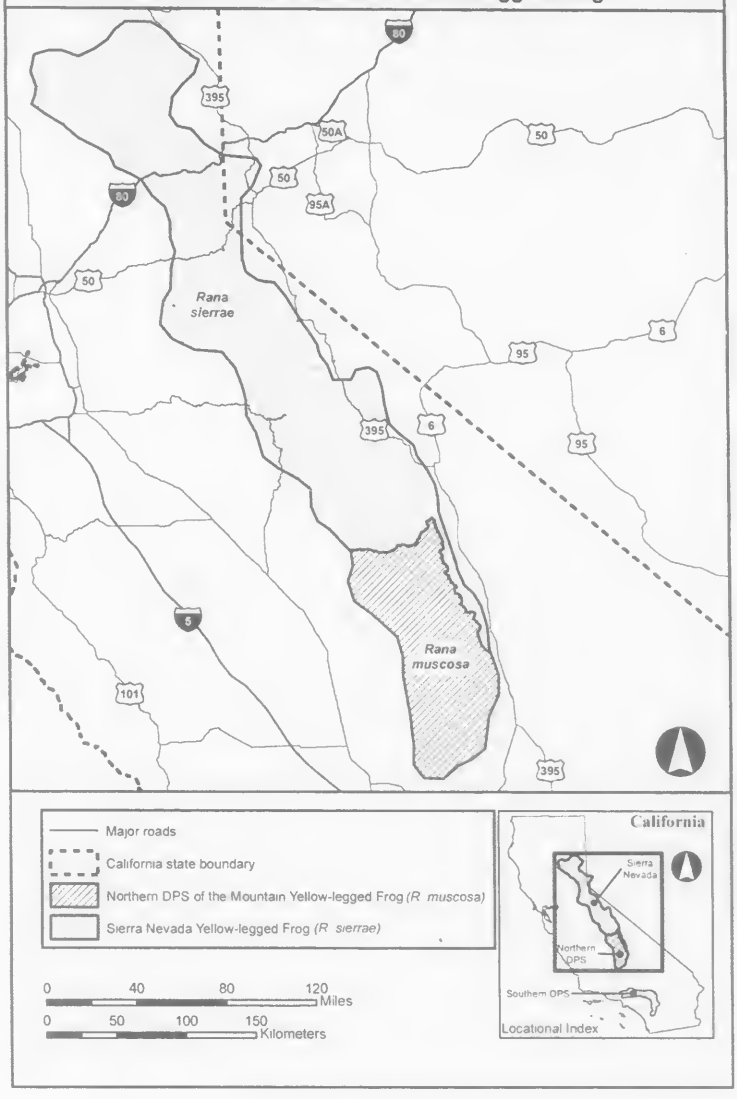
Figure 1
Estimated Historical Range of Sierra Nevada Yellow-legged Frog and Northern DPS of the Mountain Yellow-legged Frog



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For purposes of this proposed rule, we recognize the species designation as presented in Vredenburg *et al.* (2007, p. 371) and adopted by the official societies mentioned above (Crother *et al.* 2008, p. 11). Specifically, Sierra Nevada yellow-legged frogs occupy the western Sierra Nevada north of the Monarch Divide (in Fresno County) and the eastern Sierra Nevada (east of the crest) in Inyo and Mono Counties. The southern DPS of the mountain yellow-legged frog occupies the canyons of the Transverse Ranges in southern California, and is already listed as an endangered species (67 FR 44382, July 2, 2002). The northern portion of the range of mountain yellow-legged frog (extending in the western Sierra Nevada from south of the Monarch Divide in Fresno County through portions of the Kern River drainage) is referred to in this proposed rule as the northern DPS of the mountain yellow-legged frog.

Many studies cited in this document include articles and reports that were published prior to the official species reclassification, where the researchers may reference either one or both species. Where possible and appropriate, information will be referenced specifically (either as Sierra Nevada yellow-legged frog or the northern DPS of the mountain yellow-legged frog) to reflect the split of the species. Where information applies to both species, the two species will be referred to collectively as mountain yellow-legged frogs (or frog complex), consistent with the designation in each particular source document.

Species Description

The body length (snout to vent) of the mountain yellow-legged frog ranges from 40 to 80 millimeters (mm) (1.5 to 3.25 inches (in)) (Jennings and Hayes 1994, p. 74). Females average slightly larger than males, and males have a swollen, darkened thumb base (Wright and Wright 1949, pp. 424–430; Stebbins

1951, pp. 330–335; Zweifel 1955, p. 235; Zweifel 1968, p. 65.1). Dorsal (upper) coloration in adults is variable, exhibiting a mix of brown and yellow, but also can be grey, red, or green-brown, and is usually patterned with dark spots (Jennings and Hayes 1994, p. 74; Stebbins 2003, p. 233). These spots may be large (6 mm (0.25 in)) and few, smaller and more numerous, or a mixture of both (Zweifel 1955, p. 230). Irregular lichen- or moss-like patches (to which the name *muscosa* refers) may also be present on the dorsal surface (Zweifel 1955, pp. 230, 235; Stebbins 2003, p. 233).

The belly and undersurfaces of the hind limbs are yellow or orange, and this pigmentation may extend forward from the abdomen to the forelimbs (Wright and Wright 1949, pp. 424–429; Stebbins 2003, p. 233). Mountain yellow-legged frogs may produce a distinctive mink or garlic-like odor when disturbed (Wright and Wright 1949, p. 432; Stebbins 2003, p. 233). Although these species lack vocal sacs, they can vocalize in or out of water, producing what has been described as a flat clicking sound (Zweifel 1955, p. 234; Ziesmer 1997, pp. 46–47; Stebbins 2003, p. 233). Mountain yellow-legged frogs have smoother skin, generally with heavier spotting and mottling dorsally, darker toe tips (Zweifel 1955, p. 234), and more opaque ventral coloration (Stebbins 2003, pp. 233) than the foothill yellow-legged frog.

The Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog are similar morphologically and behaviorally (hence their shared taxonomic designation until recently). However, these two species can be distinguished from each other physically by the ratio of the lower leg (fibulotibia) length to snout vent length. The northern DPS of the mountain yellow-legged frog has longer limbs (Vredenburg *et al.* 2007, p. 368). Typically, this ratio is greater than or equal to 0.55 in the northern DPS of the mountain yellow-legged frog and less than 0.55 in the Sierra Nevada yellow-legged frog.

Mountain yellow-legged frogs deposit their eggs in globular clumps, which are often somewhat flattened and roughly 2.5 to 5 centimeters (cm) (1 to 2 in) in diameter (Stebbins 2003, p. 444). When eggs are close to hatching, egg mass volume averages 198 cubic cm (78 cubic in) (Pope 1999a, p. 30). Eggs have three firm, jelly-like, transparent envelopes surrounding a grey-tan or black vitelline (egg yolk) capsule (Wright and Wright 1949, pp. 431–433). Clutch size varies from 15 to 350 eggs per egg mass (Livezey and Wright 1945, p. 703; Vredenburg *et al.* 2005, p. 565). Egg development is temperature dependent. In laboratory breeding experiments, egg hatching time ranged from 18 to 21 days at temperatures of 5 to 13.5 degrees Celsius (°C) (41 to 56 degrees Fahrenheit (°F)) (Zweifel 1955, pp. 262–264). Field observations show similar results (Pope 1999a, p. 31).

The tadpoles of mountain yellow-legged frogs generally are mottled brown on the dorsal side with a faintly yellow venter (underside) (Zweifel 1955, p. 231; Stebbins 2003, p. 460). Total tadpole length reaches 72 mm (2.8 in), the body is flattened, and the tail musculature is wide (about 2.5 cm (1 in) or more) before tapering into a rounded tip (Wright and Wright 1949, p. 431). The mouth has a maximum of eight labial (lip) tooth rows (two to four upper and four lower) (Stebbins 2003, p. 460). Tadpoles may take more than 1 year (Wright and Wright 1949, p. 431), and often require 2 to 4 years, to reach metamorphosis (transformation from tadpoles to frogs) (Cory 1962b, p. 515; Bradford 1983, pp. 1171, 1182; Bradford *et al.* 1993, p. 883; Knapp and Matthews 2000, p. 435), depending on local climate conditions and site-specific variables.

The time required to reach reproductive maturity in mountain yellow-legged frogs is thought to vary between 3 and 4 years post metamorphosis (Zweifel 1955, p. 254). This information, in combination with the extended amount of time as a tadpole before metamorphosis, means that it may take 5 to 8 years for mountain yellow-legged frogs to begin reproducing. Longevity of adults is unknown, but under normal circumstances, adult survivorship from year to year is very high, so mountain yellow-legged frogs are presumed to be long-lived amphibians (Pope 1999a, p. 46).

Habitat and Life History

Mountain yellow-legged frogs currently exist in montane regions of the Sierra Nevada of California. Throughout their range, these species historically inhabited lakes, ponds, marshes, meadows, and streams at elevations ranging from 1,370 to 3,660 meters (m) (4,500 to 12,000 feet (ft)) (California Department of Fish and Game (CDFG) 2011b, pp. A-1–A-5). Mountain yellow-legged frogs are highly aquatic; they are generally not found more than 1 m (3.3 ft) from water (Stebbins 1951, p. 340; Mullally and Cunningham 1956a, p. 191; Bradford *et al.* 1993, p. 886). Adults typically are found sitting on rocks along the shoreline, usually where there is little or no vegetation (Mullally and Cunningham 1956a, p. 191). Although mountain yellow-legged frogs may use a variety of shoreline habitats, both tadpoles and adults are less common at shorelines that drop abruptly to a depth of 60 cm (2 ft) than at open shorelines that gently slope up to shallow waters of only 5 to 8 cm (2 to 3 in) in depth (Mullally and Cunningham 1956a, p. 191; Jennings and Hayes 1994, p. 77).

At lower elevations within their historical range, these species are known to be associated with rocky streambeds and wet meadows surrounded by coniferous forest (Zweifel 1955, p. 237; Zeiner *et al.* 1988, p. 88). Streams utilized by adults vary from streams having high gradients and numerous pools, rapids, and small waterfalls, to streams with low gradients and slow flows, marshy edges, and sod banks (Zweifel 1955, p. 237). Aquatic substrates vary from bedrock to fine sand, rubble (rock fragments), and boulders (Zweifel 1955, p. 237). Mountain yellow-legged frogs appear absent from the smallest creeks, probably because these creeks have insufficient depth for adequate refuge and overwintering habitat (Jennings and Hayes 1994, p. 77). Sierra Nevada yellow-legged frogs do use stream habitats, especially the remnant populations in the northern part of their range.

At higher elevations, these species occupy lakes, ponds, tarns (small steep-banked mountain lake or pool), and streams (Zweifel 1955, p. 237; Mullally and Cunningham 1956a, p. 191). Mountain yellow-legged frogs in the Sierra Nevada are most abundant in high-elevation lakes and slow-moving portions of streams (Zweifel 1955, p. 237; Mullally and Cunningham 1956a, p. 191). The borders of alpine (above the tree line) lakes and mountain meadow streams used by mountain yellow-legged frogs are frequently grassy or muddy. This differs from the sandy or rocky shores inhabited by mountain yellow-legged frogs in lower elevation streams (Zweifel 1955, pp. 237–238).

Adult mountain yellow-legged frogs breed in the shallows of ponds or in inlet streams (Vredenburg *et al.* 2005, p. 565). Adults emerge from overwintering sites immediately following snowmelt, and will even move over ice to reach breeding sites (Pope 1999a, pp. 46–47; Vredenburg *et al.* 2005, p. 565). Mountain yellow-legged frogs deposit their eggs underwater in clusters, which they attach to rocks, gravel, or vegetation, or which they deposit under banks (Wright and Wright 1949, p. 431; Stebbins 1951,

p. 341; Zweifel 1955, p. 243; Pope 1999a, p. 30).

Lake depth is an important attribute defining habitat suitability for mountain yellow-legged frogs. As tadpoles must overwinter multiple years before metamorphosis, successful breeding sites are located in (or connected to) lakes and ponds that do not dry out in the summer, and also are deep enough that they do not completely freeze or become oxygen depleted (anoxic) in winter. Both adults and tadpole mountain yellow-legged frogs overwinter for up to 9 months in the bottoms of lakes that are at least 1.7 m (5.6 ft) deep; however, overwinter survival may be greater in lakes that are at least 2.5 m (8.2 ft) deep (Bradford 1983, p. 1179; Vredenburg *et al.* 2005, p. 565).

Bradford (1983, p. 1173) found that mountain yellow-legged frog die-offs sometimes result from oxygen depletion during winter in lakes less than 4 m (13 ft) in depth. However, tadpoles may survive for months in nearly anoxic conditions when shallow lakes are frozen to the bottom. More recent work reported populations of mountain yellow-legged frogs overwintering in lakes less than 1.5 m (5 ft) deep that were assumed to have frozen to the bottom, and yet healthy frogs emerged the following July (Matthews and Pope 1999, pp. 622–623; Pope 1999a, pp. 42–43). Radio telemetry indicated that the frogs were utilizing rock crevices, holes, and ledges near shore, where water depths ranged from 0.2 m (0.7 ft) to 1.5 m (5 ft) (Matthews and Pope 1999, p. 619). The granite surrounding these overwintering habitats probably insulates mountain yellow-legged frogs from extreme winter temperatures, provided there is an adequate supply of oxygen (Matthews and Pope 1999, p. 622). In lakes and ponds that do not freeze to the bottom in winter, mountain yellow-legged frogs may overwinter in the shelter of bedrock crevices as a behavioral response to the presence of introduced fishes (Vredenburg *et al.* 2005, p. 565).

Mountain yellow-legged frog tadpoles maintain a relatively high body temperature by selecting warmer microhabitats (Bradford 1984, p. 973). During winter, tadpoles remain in warmer water below the thermocline (the transition layer between thermally stratified water). After spring overturn (thaw and thermal mixing of the water), they behaviorally modulate their body temperature by moving to shallow, near shore water when warmer days raise surface water temperatures. During the late afternoon and evening, mountain yellow-legged frogs retreat to offshore waters that are less subject to night cooling (Bradford 1984, p. 974).

Available evidence suggests that mountain yellow-legged frogs display strong site fidelity and return to the same overwintering and summer habitats from year to year (Pope 1999a, p. 45). In aquatic habitats of high mountain lakes, mountain yellow-legged frog adults typically move only a few hundred meters (few hundred yards) (Matthews and Pope 1999, p. 623; Pope 1999a, p. 45), but single-season distances of up to 3.3 kilometers (km) (2.05 miles (mi)) have been recorded along streams (Wengert 2008, p. 18). Adults tend to move between selected breeding, feeding, and overwintering habitats during the course of the year. Though typically found near water, overland movements by adults of over 66 m (217 ft) have been routinely recorded (Pope 1999a, p. 45); the farthest reported distance of a mountain yellow-legged frog from water is 400 m (1,300 ft) (Vredenburg 2002, p. 4). Along stream habitats, adults have been observed greater than 22 m (71 ft) from the water during the overwintering period (Wengert 2008, p. 20).

Almost no data exist on the dispersal of juvenile mountain yellow-legged frogs away from breeding sites; however, juveniles that may be dispersing to permanent water have been observed in small intermittent streams (Bradford 1991, p. 176). Regionally, mountain yellow-legged frogs are thought to exhibit a metapopulation structure (Bradford *et al.* 1993, p. 886; Drost and Fellers 1996, p. 424). Metapopulations are spatially separated population subunits within migratory distance of one another such that individuals may interbreed among subunits and populations may become reestablished if they are extirpated (Hanski and Simberloff 1997, p. 6).

Historical Range and Distribution

Mountain yellow-legged frogs were historically abundant and ubiquitous across much of the higher elevations within the Sierra Nevada. Grinnell and Storer (1924, p. 664) reported the Sierra Nevada yellow-legged frog to be the most common amphibian surveyed in the Yosemite area. It is difficult to know the precise historical ranges of the Sierra Nevada yellow-legged frog and the mountain yellow-legged frog, because projections must be inferred from museum collections that do not reflect systematic surveys, and survey information predating significant rangewide reduction is very limited. However, projections of historical ranges are available using predictive habitat modeling based on recent research (Knapp, unpubl. data).

The Sierra Nevada yellow-legged frog historically occurred in Nevada on the slopes of Mount Rose in Washoe County and likely in the vicinity of Lake Tahoe in Douglas County (Linsdale 1940, pp. 208–210; Zweifel 1955, p. 231; Jennings 1984, p. 52). The historical range of the Sierra Nevada yellow-legged frog extends in California from north of the Feather River, in Butte and Plumas Counties, to the south at the Monarch Divide, in Fresno County, west of the Sierra Nevada crest. East of the Sierra Nevada crest, the historical range of the Sierra Nevada yellow-legged frog extends from the Glass Mountains of Mono County, through Inyo County, to areas north of Lake Tahoe.

The northern DPS of the mountain yellow-legged frog ranges from the Monarch Divide in Fresno County southward through the headwaters of the Kern River Watershed. The ranges of the two frog species within the mountain yellow-legged complex therefore meet each other roughly along the Monarch Divide to the north, and along the crest of the Sierra Nevada to the east.

Current Range and Distribution

Since the time of the mountain yellow-legged frog observations of Grinnell and Storer (1924, pp. 664–665), a number of researchers have reported disappearances of these species from a large fraction of their historical ranges in the Sierra Nevada (Hayes and Jennings 1986, p. 490; Bradford 1989, p. 775; Bradford *et al.* 1994a, pp. 323–327; Jennings and Hayes 1994, p. 78; Jennings 1995, p. 133; Stebbins and Cohen 1995, pp. 225–226; Drost and Fellers 1996, p. 414; Jennings 1996, pp. 934–935; Knapp and Matthews 2000, p. 428; Vredenburg *et al.* 2005, p. 564).

The current distributions of the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog are restricted primarily to publicly managed lands at high elevations, including streams, lakes, ponds, and meadow wetlands located within National Forests and National Parks. National Forests with extant (surviving) populations of mountain yellow-legged frogs include the Plumas National Forest, Tahoe National Forest, Humboldt-Toiyabe National Forest, Lake Tahoe Basin Management Unit, Eldorado National Forest, Stanislaus National Forest, Sierra National Forest, Sequoia National Forest, and Inyo National Forest. National Parks with extant populations of mountain yellow-legged frogs include Yosemite National

Park, Kings Canyon National Park, and Sequoia National Park.

The most pronounced declines within the mountain yellow-legged frog complex have occurred north of Lake Tahoe in the northernmost 125-km (78-mi) portion of the range (Sierra Nevada yellow-legged frog) and south of Sequoia and Kings Canyon National Parks in Tulare County, in the southernmost 50-km (31-mi) portion, where only a few populations of the northern DPS of the mountain yellow-legged frog remain (Fellers 1994, p. 5; Jennings and Hayes 1994, pp. 74–78). Mountain yellow-legged frog populations have persisted in greater density in the National Parks of the Sierra Nevada as compared to the surrounding U.S. Forest Service (USFS) lands, and the populations that do occur in the National Parks generally exhibit higher abundances than those on USFS lands (Bradford *et al.* 1994a, p. 323; Knapp and Matthews 2000, p. 430).

Population Estimates and Status

Monitoring efforts and research studies have documented substantial declines of mountain yellow-legged frog populations in the Sierra Nevada. The number of extant populations has declined greatly over the last few decades. Remaining populations are patchily scattered throughout the historical range (Jennings and Hayes 1994, pp. 74–78; Jennings 1995, p. 133; Jennings 1996, p. 936). In the northernmost portion of the range (Butte and Plumas Counties), only a few Sierra Nevada yellow-legged frog populations have been documented since 1970 (Jennings and Hayes 1994, pp. 74–78; CDFG *et al.*, unpubl. data). Declines have also been noted in the central and southern Sierra Nevada (Drost and Fellers 1996, p. 420). In the south (Sierra, Sequoia, and Inyo National Forests; and Sequoia, Kings Canyon, and Yosemite National Parks), modest to relatively large populations (for example, breeding populations of approximately 40 to more than 200 adults) of mountain yellow-legged frogs do remain; however, in recent years some of the largest of these populations have been extirpated (Bradford 1991, p. 176; Bradford *et al.* 1994a, pp. 325–326; Knapp 2002a, p. 10).

Davidson *et al.* (2002, p. 1591) reviewed 255 previously documented mountain yellow-legged frog locations (based on Jennings and Hayes 1994, pp. 74–78) throughout the historical range and concluded that 83 percent of these sites no longer support frog populations. Vredenburg *et al.* (2007, pp. 369–371) compared recent survey records (1995–2004) with museum records from 1899–1994 and reported that 92.5 percent of historical Sierra Nevada yellow-legged frog populations and 92.3 percent of populations of the northern DPS of mountain yellow-legged frog are now extirpated.

CDFG (2011b, pp. 17–20) used historical localities from museum records covering the same time interval (1899–1994), but updated recent locality information with additional survey data (1995–2010) to significantly increase proportional coverage from the Vredenburg *et al.* (2007) study. These more recent surveys failed to detect any extant frog population (within 1 km (0.63 mi), a metric used to capture interbreeding individuals within metapopulations) at 220 of 318 historical Sierra Nevada yellow-legged frog localities and 94 of 109 historical mountain yellow-legged frog localities (in the Sierran portion of their range). This calculates to an estimated loss of 69 percent of Sierra Nevada yellow-legged frog metapopulations and 86 percent of northern DPS of the mountain yellow-legged frog metapopulations from historical occurrences.

In addition to comparisons based on individual localities, CDFG (2011b, pp. 20–25) compared historical and recent population status at the watershed scale. This is a rough index of the geographic extent of the species through their respective ranges. Within the Sierra Nevada, 44 percent of watersheds historically utilized by Sierra Nevada yellow-legged frogs, and 59 percent of watersheds historically utilized by northern DPS mountain yellow-legged frogs, no longer support extant populations. However, as recent survey efforts generally are more thorough than historical ones (they target all aquatic habitats in each surveyed watershed), this watershed-level comparison likely underestimates rangewide declines in total populations because several individual populations may be lost even though a watershed is counted as recently occupied if a single individual (at any life stage) is observed within the entire watershed (CDFG 2011b, p. 20). Furthermore, remaining populations are generally very small. Many watersheds support only a single extant metapopulation, which occupies one to several adjacent water bodies (CDFG 2011b, p. 20).

Rangewide, declines of mountain yellow-legged frog populations were estimated at around one-half of historical populations by the end of the 1980s (Bradford *et al.* 1994a, p. 323). Between 1988 and 1991, Bradford *et al.* (1994a, pp. 323–327) resurveyed sites known historically (1955 through 1979 surveys) to support mountain yellow-legged frogs. They did not detect frogs at 27 historical sites on the Kaweah River, and they detected frogs at 52 percent of historical sites within Sequoia and Kings Canyon National Parks and 12.5 percent of historical sites outside of Sequoia and Kings Canyon National Parks. When both species are combined, this resurvey effort detected mountain yellow-legged frogs at 19.4 percent of historical sites (Bradford *et al.* 1994a, pp. 324–325).

Available information discussed below indicates that the rates of population decline have not abated, and they have likely accelerated during the 1990s into the 2000s. Drost and Fellers (1996, p. 417) repeated Grinnell and Storer's early 20th century surveys, and reported frog presence at 2 of 14 historical sites. The two positive sightings consisted of a single tadpole at one site and a single adult female at another. They identified 17 additional sites with suitable mountain yellow-legged frog habitat, and in those surveys, they detected three additional populations. In 2002, Knapp (2002a, p. 10) resurveyed 302 water bodies known to be occupied by mountain yellow-legged frogs between 1995 and 1997, and 744 sites where frogs were not previously detected. Knapp found frogs at 59 percent of the previously occupied sites, whereas 8 percent of previously unoccupied sites were recolonized. These data suggest an extirpation rate five to six times higher than the colonization rate within this study area. The documented extirpations appeared to occur non-randomly across the landscape, were typically spatially clumped, and involved the disappearance of all or nearly all of the mountain yellow-legged frog populations in a watershed (Knapp 2002a, p. 9). CDFG (2011b, p. 20) assessed data from sites where multiple surveys were completed since 1995 (at least 5 years apart). They found that the Sierra Nevada yellow-legged frog was not detected at 45 percent of sites where they previously had been confirmed, while the mountain yellow-legged frog (rangewide, including southern California) was no longer detectable at 81 percent of historically occupied sites.

The USFS conducts a rangewide, long-term monitoring program for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog known as the Sierra Nevada Amphibian Monitoring Program (SNAMPH). This monitoring effort provides unbiased estimates by using an integrated unequal probability design, and it provides numbers for robust statistical comparisons across 5-year

monitoring cycles spanning 208 watersheds (Brown *et al.* 2011, pp. 3–4). The results of this assessment indicate that breeding activity for the frogs is limited to 4 percent of watersheds rangewide, and the species have declined in both distribution and abundance from historical records. For the recent historical record (positive surveys during 1990–2002 versus 2006–2009), breeding was found in about half (48 percent) of the survey sites. When compared to data prior to 1990, recent frog occurrence is limited to 3 percent of watersheds for which data exist. Moreover, relative abundances were low; an estimated 9 percent of populations were large (numbering more than 100 frogs or 500 tadpoles); about 90 percent of the watersheds had fewer than 10 adults, while 80 percent had fewer than 10 subadults and 100 tadpoles (Brown *et al.* 2011, p. 24).

To summarize population trends over the available historical record, estimates range from losses between 69 to 93 percent of Sierra Nevada yellow-legged frog populations and 86 to 92 percent of northern DPS of the mountain yellow-legged frog. Rangewide reduction has diminished the number of watersheds that support mountain yellow-legged frogs somewhere between the conservative estimates of 44 percent in the case of Sierra Nevada yellow-legged frogs and at least 59 percent in the case of northern DPS of the mountain yellow-legged frogs, to as high as 97 percent of watersheds for the mountain yellow-legged frog complex across the Sierra Nevada. Remaining populations are much smaller relative to historical norms, and the density of populations per watershed has declined greatly; as a result, many watersheds currently support single metapopulations at low abundances.

Distinct Population Segment (DPS) Analysis

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act, we, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), developed a joint policy that addresses the recognition of DPSes for potential listing actions (61 FR 4722). The policy allows for a more refined application of the Act that better reflects the biological needs of the taxon being considered and avoids the inclusion of entities that do not require the Act's protective measures.

Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment's discreteness from the remainder of the species to which it belongs and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted.

The newly recognized species, the Sierra Nevada yellow-legged frog (*Rana sierrae*), is confirmed by genetic analysis as distinct from populations of mountain yellow-legged frogs (*R. muscosa*) extant in the southern Sierra Nevada (Vredenburg *et al.* 2007, p. 367). Other distinguishing features have already been mentioned (see "Taxonomy" above). We are not conducting a DPS assessment in this proposed rule for the Sierra Nevada yellow-legged frog because we have determined the species is warranted for listing across its entire range. It is our intent to discuss below only those topics directly relevant to the identification and determination of the northern DPS of the mountain yellow-legged frog.

Discreteness

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation, status, or regulatory mechanisms exist.

The proposed DPS, the northern DPS of the mountain yellow-legged frog (northern DPS of *Rana muscosa*), satisfies the first condition for discreteness, the marked separation from other populations. The range of these mountain yellow-legged frogs is divided by a natural geographic barrier, the Tehachapi Mountains, which physically isolates populations in the southern Sierra Nevada from those in the mountains of southern California. The distance of the geographic separation is about 225 km (140 mi). Between the two population segments, there remains no connectivity through the presence of contiguous habitat sufficient for the migration, growth, rearing, or reproduction of dispersing frogs. Genetic discreteness is also well-supported in the scientific literature (see "Taxonomy" above). Therefore, we find these two population segments are discrete.

Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon, (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We have found substantial evidence that three of four significance criteria are met by the northern DPS of the mountain yellow-legged frog in the Sierra Nevada. These include ecological uniqueness, its loss would result in a significant gap in the range of the taxon, and genetic uniqueness (reflecting significant reproductive isolation over time). There are no introduced populations of mountain yellow-legged frogs outside of the species' historical range.

One of the most striking differences between northern DPS mountain yellow-legged frogs and southern California mountain yellow-legged frogs is the ecological settings they occupy. Zweifel (1955, pp. 237–241) observed that the frogs in southern California are typically found in steep gradient streams in the chaparral belt, even though they may range into small meadow streams at higher elevations. In contrast, northern DPS frogs are most abundant in high-elevation lakes and slow-moving portions of streams in the Sierra Nevada. The rugged canyons of the arid mountain ranges of southern California bear little resemblance to the alpine lakes and streams of the Sierra Nevada. The significantly different ecological settings between mountain yellow-legged frogs in southern California and those in the Sierra

Nevada distinguish these populations from each other.

Furthermore, the northern DPS populations of the mountain yellow-legged frog are significant because a catastrophic reduction in abundance of the species as a whole would occur if the populations constituting the northern range of the species were extirpated. The northern DPS mountain yellow-legged frogs comprise the main distribution of the species at the northern limits of the species' range. Loss of the northern DPS would be significant, as it would eliminate the species from a large portion of its range and would reduce the species to 9 small, isolated sites in southern California (USFWS, Jul 2012, pp. 11–12).

Finally, the northern DPS populations of mountain yellow-legged frog are biologically and ecologically significant based on genetic criteria. Vredenburg *et al.* (2007, p. 361) identified that two of three distinct genetic clades (groups of distinct lineage) constitute the northern range of the mountain yellow-legged frog found in the Sierra Nevada, with the remaining single clade represented by the endangered southern California DPS of the mountain yellow-legged frog.

Based on the differences between the ecological settings for the mountain yellow-legged frogs found in southern California (steep gradient streams) and the frogs found in the Sierra Nevada (high-elevation lakes and slow-moving portions of streams), the importance of the northern population found in the Sierra Nevada to the entire range of this species, and the genetic composition of northern clades reflecting isolation over a substantial period of time (more than 1 mybp), mountain yellow-legged frogs found in the Sierra Nevada mountains meet the significance criteria under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below. The following analysis is applicable to both the Sierra Nevada yellow-legged frog (*Rana sierrae*) and the Northern Distinct Population Segment of the mountain yellow-legged frog (*Rana muscosa*).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Destruction

A number of hypotheses, including habitat loss, have been proposed for recent global amphibian declines (Bradford *et al.* 1993, p. 883; Corn 1994, p. 62; Alford and Richards 1999, p. 4). However, physical habitat destruction does not appear to be the primary factor associated with the decline of mountain yellow-legged frogs. Mountain yellow-legged frogs occur at high elevations in the Sierra Nevada, which have not had the types or extent of large-scale habitat conversion and physical disturbance that have occurred at lower elevations (Knapp and Matthews 2000, p. 429). Thus, direct habitat destruction or modification associated with intensive human activities has not been implicated in the decline of this species (Davidson *et al.* 2002, p. 1597).

However, other human activities have played a role in the modification of mountain yellow-legged frog habitats and the curtailment of their range. The aggregation of these threats has degraded and fragmented habitats rangewide to a significant extent. These threats include: Recreational activities, fish introductions (see also Factor C below), dams and water diversions, livestock grazing, timber management, road construction and maintenance, and fire management activities. Such activities have degraded habitat in ways that have reduced their capacity to sustain viable populations and have fragmented and isolated mountain yellow-legged frog populations from each other.

Recreation

Recreational activities take place throughout the Sierra Nevada and have significant negative impacts on many plant and animal species and their habitats (U.S. Department of Agriculture (USDA) 2001a, pp. 483–493). High-elevation wilderness areas, where much of the increased recreational activity occurs, are naturally stressed ecosystems because of intense solar exposure; extremes in temperatures, precipitation levels, and wind; short growing seasons; and shallow, nutrient-poor soil. Such habitats are typically not resilient to disturbance (Schoenherr 1992, p. 167; Cole and Landres 1996, p. 170).

Recreational foot traffic in riparian areas tramples the vegetation, compacts the soils, and can physically damage the streambanks (Kondolf *et al.* 1996, pp. 1018–1020). Hiking, horse, bicycle, or off-highway motor vehicle trails compact soils within riparian habitat (Kondolf *et al.* 1996, p. 1019), and can lower the water table and cause increased erosion. The recreational activity of anglers at high mountain lakes can be locally intense in the Sierra Nevada, with most regions reporting a level of use greater than the fragile lakeshore environments can withstand (Bahls 1992, p. 190). However, studies have not been conducted to determine the extent to which recreational activities are directly contributing to the decline of the mountain yellow-legged frog complex, and direct effects from recreation have not been implicated as a major cause of the decline of these species. Nevertheless, recreational activities are the fastest growing use of National Forests. As such, their impacts on the mountain yellow-legged frog complex are likely to continue and to increase (USDA 2001b, p. 213). Currently, recreational activities are considered a threat of low significance to the species' habitat overall.

Habitat Modification Due to Introduction of Trout to Historically Fishless Areas

One habitat feature that is documented to have a significant detrimental impact to mountain yellow-legged frog populations is the presence of trout from current and historical stocking for the maintenance of a sport fishery. To further angling success and opportunity, trout stocking programs in the Sierra Nevada started in the late 19th century (Bahls 1992, p. 185; Pister 2001, p. 280). This anthropogenic activity has community-level effects and constitutes the primary detrimental impact to mountain yellow-legged frog habitat and species viability.

Prior to extensive trout planting programs, almost all streams and lakes in the Sierra Nevada at elevations above 1,800 m (6,000 ft) were fishless. Several native fish species occur naturally in aquatic habitats below this elevation in the Sierra Nevada (Knapp 1996, pp. 12–14; Moyle *et al.* 1996, p. 354; Moyle 2002, p. 25). Natural barriers prevented fish from colonizing the higher elevation headwaters of the Sierra Nevada watershed (Moyle *et al.* 1996, p. 354). The upper reaches of the Kern

River, where native fish such as the Little Kern golden trout (*Oncorhynchus mykiss whitei*) and California golden trout (*O. m. aguabonita*) evolved, represent the only major exception to the 1,800-m (6,000-ft) elevation limit for fishes within the range of the mountain yellow-legged frog in the Sierra Nevada (Moyle 2002, p. 25). Additionally, prior to extensive planting, native Paiute cutthroat (*O. clarki seleneris*) and Lahontan cutthroat (*O. c. henshawi*) also occurred within the range of the mountain yellow-legged frog in the Sierra Nevada, but were limited in their distribution (Moyle 2002, pp. 288–289).

Some of the first practitioners of trout stocking in the Sierra Nevada were the Sierra Club, local sportsmen's clubs, private citizens, and the U.S. military (Knapp 1996, p. 8; Pister 2001, p. 280). As more hatcheries were built, and the management of the trout fishery became better organized, fish planting continued for the purpose of increased angler opportunities and success (Pister 2001, p. 281). After World War II, the method of transporting trout to high-elevation areas changed from packstock to aircraft, which allowed stocking in more remote lakes and in greater numbers. With the advent of aerial stocking, trout planting expanded to new areas, with higher efficiency.

Brook trout (*Salvelinus fontinalis*), brown trout (*Salmo trutta*), rainbow trout (*Oncorhynchus mykiss*), and other trout species assemblages have been planted in most streams and lakes of the Sierra Nevada (Knapp 1996, p. 8; Moyle 2002, p. 25). National Forests in the Sierra Nevada have a higher proportion of lakes with fish occupancy than do National Parks (Knapp 1996, p. 3). This is primarily because the National Park Service (NPS) adopted a policy that greatly reduced fish stocking within their jurisdictional boundaries in the late 1970s. Fish stocking was terminated altogether in Sierra Nevada National Parks in 1991 (Knapp 1996, p. 9). CDFG continues to stock trout in National Forest water bodies, but has recently reduced the number of stocked water bodies to reduce impacts to native amphibians (ICF Jones & Stokes 2010, pp. ES–1–ES–16). Stocking decisions are based on criteria outlined in the Environmental Impact Report for the Hatchery and Stocking Program (ICF Jones & Stokes 2010, Appendix K).

Fish stocking as a practice has been widespread throughout the range of both species of mountain yellow-legged frogs. Knapp and Matthews (2000, p. 428) indicated that 65 percent of the water bodies that were 1 ha (2.5 ac) or larger in National Forests they studied were stocked with fish on a regular basis. Over 90 percent of the total water body surface area in the John Muir Wilderness was occupied by nonnative trout (Knapp and Matthews 2000, p. 434).

Another detrimental feature of fish stocking is that fish often persist in water bodies even after stocking ceases. Lakes larger than 1 ha (2.5 ac) within Sierra Nevada National Parks were estimated to have from 35 to 50 percent nonnative fish occupancy, only a 29 to 44 percent decrease since fish stocking was terminated around 2 decades before the study (Knapp 1996, p. 1). Though data on fish occupancy in streams are lacking throughout the Sierra Nevada, Knapp (1996, p. 11) estimated that 60 percent of the streams in Yosemite National Park were still occupied by introduced trout.

Trout both compete for limited resources and directly prey on mountain yellow-legged frog tadpoles and adults (see Factor C below). The presence of these fish decimates frog populations through competition and predation (see below). The impact of introduced trout was greatest in the past, as it eliminated frogs across a large expanse of their historical range. Fundamentally, this has removed deeper lakes from being mountain yellow-legged frog habitat at a landscape scale, because fish now populate these areas instead of frogs. Moreover, introduced trout continue to limit species viability because remaining populations are now isolated, and functional dispersal barriers make emigration difficult. Finally, the few frogs that do successfully emigrate will move to inhospitable, fish-occupied habitat where they are often outcompeted or preyed upon by trout. These factors make recolonization of extirpated sites unlikely.

The body of scientific research has demonstrated that introduced trout have negatively impacted mountain yellow-legged frogs over much of the Sierra Nevada (Grinnell and Storer 1924, p. 664; Bradford 1989, pp. 775–778; Bradford *et al.* 1993, pp. 882–888; Knapp 1994, p. 3; Drost and Fellers 1996, p. 422; Knapp 1996, pp. 13–15; Knapp and Matthews 2000, p. 428; Knapp *et al.* 2001, p. 401). Fish stocking programs have negative ecological implications because fish eat aquatic flora and fauna, including amphibians and invertebrates (Bahls 1992, p. 191; Erman 1996, p. 992; Matthews *et al.* 2001, pp. 1135–1136; Pilliod and Peterson 2001, p. 329; Schindler *et al.* 2001, p. 309; Moyle 2002, p. 58; Epanchin *et al.* 2010, p. 2406). Finlay and Vredenburg (2007, p. 2187) documented that the same benthic (bottom-dwelling) invertebrate resource base sustains the growth of both frogs and trout, suggesting that competition with trout for prey is an important factor that may contribute to the decline of the mountain yellow-legged frog.

Knapp and Matthews (2000, p. 428) surveyed more than 1,700 water bodies, and concluded that a strong negative correlation exists between introduced trout and mountain yellow-legged frogs (Knapp and Matthews 2000, p. 435). Consistent with this finding are the results of an analysis of the distribution of mountain yellow-legged frog tadpoles, which indicate that the presence and abundance of this life stage are reduced dramatically in fish-stocked lakes (Knapp *et al.* 2001, p. 408). Knapp (2005a, pp. 265–279) also compared the distribution of nonnative trout with the distributions of several amphibian and reptile species in 2,239 lakes and ponds in Yosemite National Park, and found that mountain yellow-legged frogs were five times less likely to be detected in waters where trout were present. Even though stocking within the National Park ceased in 1991, more than 50 percent of water bodies deeper than 4 m (13 ft) and 75 percent deeper than 16 m (52 ft) still contained trout populations in 2000–2002 (Knapp 2005a, p. 270). Both trout and mountain yellow-legged frogs utilize deeper water bodies. Based on the results from Knapp (2005a), the reduced detection of frogs in trout-occupied waters indicates that trout are excluding mountain yellow-legged frogs from some of the best aquatic habitat.

Several aspects of the mountain yellow-legged frog's life history may exacerbate its vulnerability to extirpation by trout (Bradford 1989, pp. 777–778; Bradford *et al.* 1993, pp. 886–888; Knapp 1996, p. 14; Knapp and Matthews 2000, p. 435). Mountain yellow-legged frogs are aquatic and found mainly in lakes. This increases the probability that they will encounter introduced fishes whose distribution has been greatly expanded throughout the Sierra Nevada. The multiple-year tadpole stage of the mountain yellow-legged frog necessitates their use of permanent water bodies deep enough to not freeze solid during multiple winters (unless there is some other refuge from freezing and oxygen depletion, such as submerged crevices). Also, overwintering adults must avoid oxygen depletion when the water is covered by ice (Mullally and Cunningham 1956a, p. 194; Bradford 1983, p. 1179; Knapp and Matthews 2000, pp. 435–436). This functionally restricts tadpoles to the same water bodies most suitable for fishes (Knapp 1996, p. 14), and the consequences of predation and

competition thereby isolate mountain yellow-legged frogs to fishless, marginal habitats (Bradford *et al.* 1993, pp. 886–887; Knapp and Matthews 2000, p. 435).

Mountain yellow-legged frogs and trout (native and nonnative) do co-occur at some sites, but these co-occurrences are probably mountain yellow-legged frog population sinks (areas with negative population growth rates in the absence of immigration) (Bradford *et al.* 1998, p. 2489; Knapp and Matthews 2000, p. 436). Mountain yellow-legged frogs have also been extirpated at some fishless bodies of water (Bradford 1991, p. 176; Drost and Fellers 1996, p. 422). A possible explanation is the isolation and fragmentation of remaining populations due to introduced fishes in the streams that once provided mountain yellow-legged frogs with dispersal and recolonization routes; these remote populations are now non-functional as metapopulations (Bradford 1991, p. 176; Bradford *et al.* 1993, p. 887). Based on a survey of 95 basins within Sequoia and Kings Canyon National Parks, Bradford *et al.* (1993, pp. 885–886) estimated that the introduction of fishes into the study area resulted in an approximately 10-fold increase in habitat fragmentation between populations of mountain yellow-legged frogs. Knapp and Matthews (2000, p. 436) believe that this fragmentation has further isolated mountain yellow-legged frogs within the already marginal habitat left unused by fishes.

Fragmentation of mountain yellow-legged frog habitat renders metapopulations more vulnerable to extirpation from random events (such as disease) (Wilcox 1980, pp. 114–115; Bradford *et al.* 1993, p. 887; Hanski and Simberloff 1997, p. 21; Knapp and Matthews 2000, p. 436). Isolated population locations may have higher extinction rates because trout prevent successful recolonization and dispersal to and from these sites (Bradford *et al.* 1993, p. 887; Blaustein *et al.* 1994a, p. 7; Knapp and Matthews 2000, p. 436). Amphibians may be unable to recolonize unoccupied sites following local extinctions because of physiological constraints, the tendency to move only short distances, and high site fidelity (Blaustein *et al.* 1994a, p. 8). Finally, frogs that do attempt recolonization may emigrate into fish-occupied habitat and perish, rendering sites with such metapopulation dynamics less able to sustain frog populations.

Although fish stocking has been curtailed within many occupied basins, the impacts to frog populations persist due to the presence of self-sustaining fish populations in some of the best habitat that normally would have sustained mountain yellow-legged frogs. The fragmentation that persists across the range of these frog species renders them more vulnerable to other population stressors, and recovery is slow, if not impossible, without costly and physically difficult direct human intervention (such as physical and chemical trout removal). While most of the impacts occurred historically, the impact upon the biogeographic (population/metapopulation) integrity of the species will be long-lasting. Currently, habitat degradation and fragmentation by fish is considered a highly significant and prevalent threat to persistence and recovery of the species.

Dams and Water Diversions

Numerous reservoirs have been constructed within the ranges of the mountain yellow-legged frog complex. These include Huntington Lake, Florence Lake, Lake Thomas A. Edison, Saddlebag Lake, Convict Lake, Cherry Lake, and other reservoirs associated with Hetch Hetchy, Upper and Lower Blue Lakes, Lake Aloha, Silver Lake, Hell Hole Reservoir, French Meadow Reservoir, Lake Spaulding, Alpine Lake, Loon Lake, Ice House Reservoir, and others. Dams and water diversions have altered aquatic habitats in the Sierra Nevada (Kondolf *et al.* 1996, p. 1014). The combination of these two features has reduced habitat suitability within the range of the species by creating migration barriers and altering local hydrology. This stressor causes considerable habitat fragmentation and direct habitat loss in those areas where water projects were constructed and are operating.

The extent of the impact to mountain yellow-legged frog populations from habitat loss or modification due to these projects has not been quantified. However, the construction of dams has affected populations in the Sierra Nevada by altering the distribution of predators (reservoirs are often stocked with fish species that prey on mountain yellow-legged frogs) and affecting the effective dispersal of migrating frogs. Mountain yellow-legged frogs cannot live in or disperse effectively through the exposed shorelines created by reservoirs. nor can they successfully reproduce in these environments unless there are shallow side channels or disjunct pools free of predatory fishes (Jennings 1996, p. 939). In this fashion, reservoirs represent considerable dispersal barriers that further fragment the range of the mountain yellow-legged frogs.

Dams alter the temperature and sediment load of the rivers they impound (Cole and Landres 1996, p. 175). Dams, water diversions, and their associated structures also alter the natural flow regime with unseasonal and fluctuating releases of water. These features may create habitat conditions unsuitable for native amphibians both upstream and downstream of dams, and they may act as barriers to movement by dispersing juvenile and migrating adult amphibians (Jennings 1996, p. 939). Where dams act as barriers to mountain yellow-legged frog movement, they effectively prevent genetic exchange between populations and the recolonization of vacant sites.

Water diversions may remove water from mountain yellow-legged frog habitat and adversely impact breeding success and adult survivorship. This results in physical reduction in habitat area and potentially lowers water levels to the extent that the entire water column freezes in the winter, thereby removing aquatic habitat altogether. Given the amount of water development within the historical ranges of mountain yellow-legged frogs, these factors likely have contributed to population declines, and ongoing management and habitat fragmentation will continue to pose a risk to the species. The magnitude of such impacts would increase if long droughts become more frequent in the future (see Factor E below) or if increasing diversions and storage facilities are constructed and implemented to meet growing needs for water and power. Currently, dams and water diversions are considered a moderate, prevalent threat to persistence and recovery of the species.

Livestock Use (Grazing)

As discussed below, grazing reduces the suitability of habitat for mountain yellow-legged frogs by reducing its capability to sustain frogs and facilitate dispersal and migration, especially in stream areas. The impact of this stressor to mountain yellow-legged frogs is ongoing, but of relatively low importance as a limiting factor on extant populations. While this stressor may have played a greater role historically, leading in part to rangewide reduction of the species (see below), the geographic extent of livestock grazing activity within current mountain yellow-legged frog habitat does not encompass the entire range of the species.

Grazing of livestock in riparian areas impacts vegetation in multiple ways, including soil compaction, which increases runoff and decreases water availability to plants; vegetation

removal, which promotes increased soil temperatures and evaporation rates at the soil surface; and direct physical damage to the vegetation (Kauffman and Krueger 1984, pp. 433–434; Cole and Landres 1996, pp. 171–172; Knapp and Matthews 1996, pp. 816–817). Streamside vegetation protects and stabilizes streambanks by binding soils to resist erosion and trap sediment (Kauffman *et al.* 1983, p. 683; Chaney *et al.* 1990, p. 2). Removal of vegetative cover within mountain yellow-legged frog habitat decreases available habitat, exposes frogs to predation (Knapp 1993b, p.1), and increases the threat of desiccation (Jennings 1996, p. 539).

Aquatic habitat can also be degraded by grazing. Mass erosion from trampling and hoof slide causes streambank collapse and an accelerated rate of soil transport to streams (Meehan and Platts 1978, p. 274). Accelerated rates of erosion lead to elevated instream sediment loads and depositions, and changes in stream-channel morphology (Meehan and Platts 1978, pp. 275–276; Kauffman and Krueger 1984, p. 432). Livestock grazing may lead to diminished perennial streamflows (Armour *et al.* 1994, p. 10). Livestock can increase nutrient-loading in water bodies due to urination and defecation in or near the water, and can cause elevated bacteria levels in areas where cattle are concentrated (Meehan and Platts 1978, p. 276; Stephenson and Street 1978, p. 156; Kauffman and Krueger 1984, p. 432). With increased grazing intensity, these adverse effects to the aquatic ecosystem increase proportionately (Meehan and Platts 1978, p. 275; Clary and Kinney 2000, p. 294).

Observational data indicate that livestock negatively impact mountain yellow-legged frogs by altering riparian habitat and trampling individuals (Knapp 1993a, p. 1; 1993b, p. 1; 1994, p. 3; Jennings 1996, p. 938; Carlson 2002, pers. comm.; Knapp 2002a, p. 29). Livestock tend to concentrate along streams and wet areas where there is water and herbaceous vegetation; grazing impacts are therefore most pronounced in these habitats (Meehan and Platts 1978, p. 274; U.S. Government Accounting Office (GAO) 1988, pp. 10–11; Fleischner 1994, p. 635; Menke *et al.* 1996, p. 17). This concentration of livestock contributes to the destabilization of streambanks, causing undercuts and bank failures (Kauffman *et al.* 1983, p. 684; Marlow and Pogacnik 1985, pp. 282–283; Knapp and Matthews 1996, p. 816; Moyle 2002, p. 55). Grazing activity contributes to the downcutting of streambeds and lowers the water table (Meehan and Platts 1978, pp. 275–276; Kauffman *et al.* 1983, p. 685; Kauffman and Krueger 1984, p. 432; Bohn and Buckhouse 1985, p. 378; GAO 1988, p. 11; Armour *et al.* 1994, pp. 9–11; Moyle 2002, p. 55).

Livestock grazing may impact other wetland systems, including ponds that can serve as mountain yellow-legged frog habitat. Grazing modifies shoreline habitats by removing overhanging banks that provide shelter, and grazing contributes to the siltation of breeding ponds. Pond siltation has been demonstrated to reduce the depth of breeding ponds and to cover underwater crevices, thereby making the ponds less suitable, or unsuitable, as overwintering habitat for tadpoles and adult mountain yellow-legged frogs (Bradford 1983, p. 1179; Pope 1999a, pp. 43–44).

In general, historical livestock grazing within the range of the mountain yellow-legged frog was at a high (although undocumented) level until the establishment of National Parks (beginning in 1890) and National Forests (beginning in 1905) (UC 1996a, p. 114; Menke *et al.* 1996, p. 14). Within the newly established National Parks, grazing by cattle and sheep was replaced by that of packstock, such as horses and burros. Within the National Forests, the amount of livestock grazing was gradually reduced, and the types of animals shifted away from sheep and toward cattle and packstock.

For mountain yellow-legged frogs, livestock grazing activity is likely a minor prevalent threat to currently extant populations, although in certain areas it may exacerbate habitat fragmentation already facilitated by the introduction of trout. There are currently 161 active Rangeland Management Unit Allotments for grazing in USFS-administered lands. Twenty-seven of these allotments have extant mountain yellow-legged frog populations (based on surveys performed after 2005). Currently, other allotments have been closed in certain sensitive areas, and standards have been implemented in remaining allotments to protect aquatic habitats. This threat is likely more one of historical significance. While it may be a factor in certain allotments with active grazing and extant populations, rangewide it is likely not a significant risk factor as many populations persist outside of actively grazed areas.

Packstock Use

Packstock grazing is the only grazing currently permitted in the National Parks of the Sierra Nevada. Use of packstock in the Sierra Nevada has increased since World War II as a result of improved road access and increases in leisure time and disposable income (Menke *et al.* 1996, p. 14). In the Sixty-Lakes Basin of Kings Canyon National Park, packstock use is regulated in wet meadows to protect mountain yellow-legged frog breeding habitat in bogs and lake shores from trampling and associated degradation (Vredenburg 2002, p. 11; Werner 2002, p. 2). Packstock use is also permitted in National Forests within the Sierra Nevada. However, there has been very little monitoring of the impacts of such activity in this region (Menke *et al.* 1996, p. 14), so its contribution to the decline of frog populations is impossible to quantify.

Packstock use is likely a threat of low significance to mountain yellow-legged frogs at the current time, except on a limited, site-specific basis. As California's human population increases, the impact of recreational activities, including packstock use and riding in the Sierra Nevada, are projected to increase (USDA 2001a, pp. 473–474). This activity may pose a risk to some remnant populations of frogs and, in certain circumstances, a hindrance to recovery of populations in heavily used lakes.

Roads and Timber Harvest

Activities that alter the terrestrial environment (such as road construction and timber harvest) may impact amphibian populations in the Sierra Nevada (Jennings 1996, p. 938). These impacts are understandably in proportion to the magnitude of the alteration to the environment, and are more pronounced in areas with less stringent mitigation measures (that is, outside National Parks or wilderness areas). Road construction and timber harvest were likely of greater significance historically, and may have acted to reduce the species' range prior to the more recent detailed studies and systematic monitoring that have quantified and documented these losses.

Timber harvest activities remove vegetation and cause ground disturbance and compaction, making the ground more susceptible to erosion (Helms and Tappeiner 1996, p. 446). This erosion increases siltation downstream that could potentially damage mountain yellow-legged frog breeding habitat. Timber harvest may alter the annual hydrograph (timing and volume of surface flows), possibly lowering the water table, which could dewater riparian habitats used by mountain yellow-legged frogs. The majority of erosion caused by timber harvests is from logging roads (Helms and Tappeiner 1996, p. 447). Prior to the formation of National Parks in 1890 and

National Forests in 1905, timber harvest was widespread and unregulated, but primarily took place at elevations on the western slope of the Sierra Nevada below the range of the mountain yellow-legged frog (University of California (UC) 1996b, pp. 24–25). Between 1900 and 1950, the majority of timber harvest occurred in old-growth forests on private land (UC 1996b, p. 25). Between 1950 and the early 1990s, there were increases in timber harvest on National Forests, and the majority of timber harvest-associated impacts on mountain yellow-legged frogs may therefore have taken place during this period.

Roads, including those associated with timber harvests, can contribute to habitat fragmentation and limit amphibian movement, thus having a negative effect on amphibian species richness (Lehtinen *et al.* 1999, pp. 8–9; deMaynadier and Hunter 2000, p. 56). This effect could fragment mountain yellow-legged frog habitat if the road bisected habitat consisting of water bodies in close proximity.

Currently, most of the mountain yellow-legged frog populations occur in National Parks or designated wilderness areas where timber is not harvested (Bradford *et al.* 1994a, p. 323; Drost and Fellers 1996, p. 421; Knapp and Matthews 2000, p. 430). Other mountain yellow-legged frog populations outside of these areas are located above the timberline, so timber harvest activity is not expected to affect the majority of extant mountain yellow-legged frog populations. There remain some mountain yellow-legged frog populations in areas where timber harvests occur or may occur in the future. Roads also exist within the range of the mountain yellow-legged frog, and more may be constructed. However, neither of these factors has been implicated as an important contributor to the decline of this species (Jennings 1996, pp. 921–941). It is likely a minor prevalent threat to mountain yellow-legged frogs factored across the range of the species.

Fire and Fire Management Activities

Mountain yellow-legged frogs are generally found at high elevations in wilderness areas and National Parks where vegetation is sparse and fire suppression activities are infrequently implemented. Where such activities may occur, potential impacts to the species resulting from fire management activities include: Habitat degradation through water drafting (taking of water) from occupied ponds and lakes, erosion and siltation of habitat from construction of fuel breaks, and contamination by fire retardants from chemical fire suppression.

In some areas within the current range of the mountain yellow-legged frog, long-term fire suppression has changed the forest structure and created conditions that increase fire severity and intensity (McKelvey *et al.* 1996, pp. 1934–1935). Excessive erosion and siltation of habitats following wildfire is a concern in shallow, lower elevation areas below forested stands. However, prescribed fire has been used by land managers to achieve various silvicultural objectives, including fuel load reduction. In some systems, fire is thought to be important in maintaining open aquatic and riparian habitats for amphibians (Russell ASLO 1999, p. 378), although severe and intense wildfires may reduce amphibian survival, as the moist and permeable skin of amphibians increases their susceptibility to heat and desiccation (Russell *et al.* 1999, p. 374). Amphibians may avoid direct mortality from fire by retreating to wet habitats or sheltering in subterranean burrows.

It is not known what impacts fire and fire management activities have had on historical populations of mountain yellow-legged frogs. Neither the direct nor indirect effects of prescribed fire or wildfire on the mountain yellow-legged frog have been studied. Where fire has occurred in southern California, the character of the habitat has been significantly altered, leading to erosive scouring and flooding after surface vegetation is denuded (North 2012, pers. comm.). When a large fire does occur in occupied habitat, mountain yellow-legged frogs are susceptible to direct mortality (leading to significantly reduced population sizes) and indirect effects (habitat alteration and reduced breeding habitat). It is suspected that at least one population in the southern DPS was nearly extirpated by fire on the East Fork City Creek (San Bernadino Mountains) in 2003 (North 2012, pers. comm.). It is possible that fire has caused localized extirpations in the past. However, because the species generally occupies high-elevation habitat, fire is likely not a significant risk to this species over much of its current range.

In summary, based on the best available scientific and commercial information, we consider the threats of modification and curtailment of the species' habitat and range to be significant, ongoing threats to the Sierra Nevada yellow-legged frog and northern DPS of the mountain yellow-legged frog. Threats from recreational foot traffic, camping, and timber harvest and related activities are not quantified, but they are not thought to be major drivers of frog population dynamics. Threats of low prevalence (important limiting factors in some areas, but not across a large part of the mountain yellow-legged frog complex's range) include grazing and fire management activities. Dams and water diversions likely present a moderate prevalent threat. Habitat fragmentation and degradation (loss of habitat through competitive exclusion) by stocked and persistent introduced trout across the majority of the species' range are a threat of high prevalence. This threat is a significant limiting factor to persistence and recovery of the species rangewide.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no known commercial market for mountain yellow-legged frogs, nor are there documented recreational or educational uses for these species. Mountain yellow-legged frogs do not appear to be particularly popular among amphibian and reptile collectors; however, Federal listing could raise the value of the animals within wildlife trade markets and increase the threat of unauthorized collection above current levels (McCloud 2002, pers. comm.).

Scientific collection for museum specimens has resulted in the death of numerous individuals (Zweifel 1955, p. 207; Jennings and Hayes 1994, pp. 74–78). However, this occurred at times when the populations were at greater abundances and geographic distribution and in numbers that likely had little influence on the overall population from which individuals were sampled. Scientific research may cause stress to mountain yellow-legged frogs through disturbance, including disruption of the species' behavior, handling of individual frogs, and injuries associated with marking and tracking individuals. However, this is a relatively minor nuisance and not likely a negative impact to the survival and reproduction of individuals or the viability of the population.

Based on the best available scientific and commercial information, we do not consider the overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the mountain yellow-legged frog complex now or in the future.

Factor C. Disease or Predation

Predation

Researchers have observed predation of mountain yellow-legged frogs by the mountain garter snake (*Thamnophis*

elegans elegans), Brewer's blackbird (*Euphagus cyanocephalus*), Clark's nutcracker (*Nucifraga columbiana*), coyote (*Canis latrans*), and black bear (*Ursus americanus*) (Mullally and Cunningham 1956a, p. 193; Bradford 1991, pp. 176–177; Jennings *et al.* 1992, p. 505; Feldman and Wilkinson 2000, p. 102; Vredenburg *et al.* 2005, p. 565). However, none of these has been implicated as a driver of population dynamics, so it is presumed that such predation occurrences are incidental and do not significantly impact frog populations (except perhaps in circumstances where so few individuals remain that the loss of low numbers of individuals would be of significant concern).

The most prominent predator of mountain yellow-legged frogs is introduced trout, whose significance is well-established because it has been repeatedly observed that nonnative fishes and frogs rarely coexist, and it is known that introduced trout can and do prey on all frog life stages (Grinnell and Storer 1924, p. 664; Mullally and Cunningham 1956a, p. 190; Cory 1962a, p. 401; 1963, p. 172; Bradford 1989, pp. 775–778; Bradford and Gordon 1992, p. 65; Bradford *et al.* 1993, pp. 882–888; 1994a, p. 326; Drost and Fellers 1996, p. 422; Jennings 1996, p. 940; Knapp 1996, p. 14; Knapp and Matthews 2000, p. 428; Knapp *et al.* 2001, p. 401; Vredenburg 2004, p. 7649). It is estimated that 63 percent of lakes larger than 1 ha (2.5 ac) in the Sierra Nevada contain one or more nonnative trout species, and greater than 60 percent of streams contain nonnative trout (Knapp, 1996, pp. 1–44), in some areas comprising greater than 90 percent of total water body surface area (Knapp and Matthews 2000, p. 434).

The multiple-year tadpole stage of the mountain yellow-legged frog requires submersion in the aquatic habitat year-round until metamorphosis. Moreover, all life stages are highly aquatic, increasing the frog's susceptibility to predation by trout (where they co-occur) throughout its lifespan. Overwinter mortality due to predation is especially significant because, when water bodies ice over in winter, tadpoles are forced from shallow margins of lakes and ponds into deeper unfrozen water where they are more vulnerable to predation; fish encounters in such areas increase, while refuge is less available.

The predation of mountain yellow-legged frogs by fishes observed in the early 20th century by Grinnell and Storer and the documented declines of the 1970s (Bradford 1991, pp. 174–177; Bradford *et al.* 1994a, pp. 323–327; Stebbins and Cohen 1995, pp. 226–227) were not the beginning of the mountain yellow-legged frog's decline, but rather the end of a long decline that started soon after fish introductions to the Sierra Nevada began in the mid-1800s (Knapp and Matthews 2000, p. 436). Metapopulation theory (Hanski 1997, pp. 85–86) predicts this type of time lag from habitat modification to population extinction (Knapp and Matthews 2000, p. 436). In 2004, Vredenburg (2004, p. 7647) concluded that introduced trout are effective predators on mountain yellow-legged frog tadpoles and suggested that the introduction of trout is the most likely reason for the decline of the mountain yellow-legged frog complex. This threat is a significant, prevalent risk to mountain yellow-legged frogs rangewide, and it will persist into the future.

Disease

Over roughly the last 2 decades, pathogens have been associated with amphibian population declines, mass die-offs, and even extinctions worldwide (Bradford 1991, pp. 174–177; Blaustein *et al.* 1994b, pp. 251–254; Alford and Richards 1999, pp. 506; Muths *et al.* 2003, p. 357; Weldon *et al.* 2004, p. 2100; Rachowicz *et al.* 2005, p. 1446; Fisher *et al.* 2009, p. 292). One pathogen strongly associated with dramatic declines on all five continents is the chytrid fungus, *Batrachochytrium dendrobatidis* (Bd) (Rachowicz *et al.* 2005, p. 1442). This chytrid fungus has now been reported in amphibian species worldwide (Fellers *et al.* 2001, p. 945; Rachowicz *et al.* 2005, p. 1442). Early doubt that this particular pathogen was responsible for worldwide die-offs has largely been overcome by the weight of evidence documenting the appearance, spread, and detrimental effects to affected populations (Vredenburg *et al.* 2010a, p. 9689). The correlation of notable amphibian declines with reports of outbreaks of fatal chytridiomycosis (the disease caused by Bd) in montane areas has led to a general association between high altitude, cooler climates, and population extirpations associated with Bd (Fisher *et al.* 2009, p. 298).

Bd affects the mouth parts and epidermal (skin) tissue of tadpoles and metamorphosed frogs (Fellers *et al.* 2001, pp. 950–951). The fungus can reproduce asexually, and can generally withstand adverse conditions such as freezing or drought (Briggs *et al.* 2002, p. 38). It also may reproduce sexually, leading to thick-walled sporangia that would be capable of long-term survival (for distant transport and persistence in sites even after all susceptible host animal populations are extirpated) (Morgan *et al.* 2007, p. 13849). Adult frogs can acquire this fungus from tadpoles, and it can also be transmitted between tadpoles (Rachowicz and Vredenburg 2004, p. 80).

In California, chytridiomycosis has been detected in many amphibian species, including mountain yellow-legged frogs (Briggs *et al.* 2002, p. 38; Knapp 2002b, p. 1). The earliest documented case in the mountain yellow-legged frog complex was in 1998, at Yosemite National Park (Fellers *et al.* 2001, p. 945). It is unclear how Bd was originally transmitted to the frogs (Briggs *et al.* 2002, p. 39). Visual examination of 43 tadpole specimens collected between 1955 and 1976 revealed no evidence of Bd infection; however 14 of 36 specimens preserved between 1993 and 1999 did have abnormalities attributable to Bd (Fellers *et al.* 2001, p. 947). Since at least 1976, Bd has affected adult Yosemite toads (Green and Kagarise Sherman 2001, p. 92), whose range overlaps with the mountain yellow-legged frogs. Therefore, it is possible that this pathogen has affected all three amphibian species covered in this proposed rule since at least the mid-1970s. Mountain yellow-legged frogs may be especially vulnerable to Bd infections because all life stages share the same aquatic habitat nearly year round, facilitating the transmission of this fungus among individuals at different life stages (Fellers *et al.* 2001, p. 951).

During the epidemic phase of chytrid infection into unexposed populations, rapid die-offs are observed within short order for adult and subadult lifestages (Vredenburg *et al.* 2010a, p. 9691), while tadpoles are less affected at first (Vredenburg *et al.* 2010a, p. 9689). In mountain yellow-legged frogs, Bd causes overwinter mortality and mortality during metamorphosis (Briggs *et al.* 2002, p. 39; Rachowicz 2005, pp. 2–3); metamorphs are the most sensitive life stage to Bd infection (Kilpatrick *et al.* 2009, p. 113; Vredenburg *et al.* 2010b, p. 3). Field and laboratory experiments indicate that Bd infection is generally lethal to mountain yellow-legged frogs, and is likely responsible for recent declines (Knapp 2005b; Rachowicz 2005, pers. comm.). Rachowicz *et al.* (2006, p. 1671) monitored several infected and uninfected populations in Sequoia and Kings Canyon National Parks over multiple years, documenting dramatic declines and extirpations in only the infected populations. Rapid die-offs of mountain yellow-legged frogs from chytridiomycosis have been observed in more than 50 water bodies in the southern Sierra Nevada (Briggs *et al.*

2005, p. 3151). Studies of the microscopic structure of tissue and other evidence suggests Bd caused many of the recent extinctions in the Sierra National Forest's John Muir Wilderness Area and in Kings Canyon National Park, where 41 percent of the populations went extinct between 1995 and 2002 (Knapp 2002a, p. 10).

In several areas where detailed studies of the effects of Bd on the mountain yellow-legged frog are ongoing, substantial declines have been observed following the course of the disease infection and spread. Survey results from 2000 in Yosemite and Sequoia-Kings Canyon National Parks indicate that 24 percent of the mountain yellow-legged frog populations showed signs of Bd infection (Briggs *et al.* 2002, p. 40). In both 2003 and 2004, 19 percent of assayed populations in Sequoia and Kings Canyon National Parks were infected with Bd (Rachowicz 2005, pp. 2–3). By 2005, 91 percent of assayed populations in Yosemite National Park showed evidence of Bd infection (Knapp 2005b, pp. 1–2). Currently, it is believed that all populations in Yosemite Park are infected with Bd (Briggs *et al.* 2010, p. 9695).

The effects of Bd on host populations of the mountain yellow-legged frog are variable, ranging from extinction, to persistence with a high level of infection, to persistence with a low level of infection (Briggs *et al.* 2002, pp. 40–41). In populations where Bd infection first occurs, the most common outcome is epidemic spread of the disease and population extirpation (Briggs *et al.* 2010, p. 9699). Die-offs are characterized by rapid onset of high level Bd infections, followed by death due to chytridiomycosis. Adults in persistent populations frequently recover and are subsequently re-infected by Bd at low levels (Briggs *et al.* 2010, pp. 9695–9696). However, it is apparent that even at sites exhibiting population persistence with Bd, high mortality of metamorphosing frogs persists, and this phenomenon may explain the lower abundances observed in such populations (Briggs *et al.* 2010, p. 9699).

Vredenburg *et al.* (2010a, pp. 2–4) studied frog populations before, during, and after the infection and spread of Bd in three study basins constituting 13, 33, and 42 frog populations, then comprising the most intact metapopulations remaining for these species throughout their range. The spread of Bd averaged 688 m/year (yr) (2,257 ft/yr), reaching all areas of the smaller basin in 1 year, and taking 3 to 5 years to completely infect the larger basins, progressing like a wave across the landscape. The researchers documented die-offs following the spread of Bd, with decreased population growth rates evident within the first year of infection. Basinwide, metapopulations crashed from 1,680 to 22 individuals (northern DPS of the mountain yellow-legged frog) in Milestone Basin, with 9 of 13 populations extirpated; from 2,193 to 47 individuals (northern DPS of the mountain yellow-legged frog) in Sixty Lakes Basin, with 27 of 33 populations extirpated; and from 5,588 to 436 individuals (Sierra Nevada yellow-legged frog) in Barrett Lakes Basin, with 33 of 42 populations extirpated. It is clear from the evidence that Bd can and does decimate newly infected frog populations. Moreover, this rangewide population threat is acting upon a landscape already impacted by habitat modification and degradation by introduced fishes (see Factor A discussion, above). As a result, remnant populations in fishless lakes are now impacted by Bd.

Vredenburg *et al.* (2010a, p. 3) projected that at current extinction rates, and given the disease dynamics of Bd (infected tadpoles succumb to chytridiomycosis at metamorphosis), most if not all extant populations within the recently infected basins they studied will go extinct within the next 3 years. Available data (CDFG, unpubl. data; Knapp 2005b; Rachowicz 2005, pers. comm.; Rachowicz *et al.* 2006, p. 1671) indicate that Bd is now widespread throughout the Sierra Nevada, and, although it has not infected all populations at this time, it is effectively a serious and substantial threat rangewide to the mountain yellow-legged frog complex.

Other diseases have also been reported as adversely affecting amphibian species, and these may be present within the range of the mountain yellow-legged frog. Bradford (1991, p. 174–177) reported an outbreak of red-leg disease in Kings Canyon National Park, and suggested this was a result of overcrowding within a mountain yellow-legged frog population. Red-leg disease is caused by the bacterial pathogen *Aeromonas hydrophila*, along with other pathogens. Though red-leg disease is opportunistic and successfully attacks immune-suppressed individuals, this pathogen appears to be highly contagious, affecting the epidermis and digestive tract of otherwise healthy amphibians (Shotts 1984, pp. 51–52; Carey 1993, p. 358; Carey and Bryant 1995, pp. 14–15). Although it has been observed in at least one instance correlated to frog population decline, red-leg disease is likely not a significant contributor to observed frog population declines rangewide, based on the available literature.

Saprolegnia is a globally distributed fungus that commonly attacks all life stages of fishes (especially hatchery-reared fishes), and has recently been documented to attack and kill egg masses of western toads (*Bufo boreas*) (Blaustein *et al.* 1994b, p. 252). This pathogen may be introduced through fish stocking, or it may already be established in the aquatic ecosystem. Fishes and migrating or dispersing amphibians may be a vector for this fungus (Blaustein *et al.* 1994b, p. 253; Kiesecker *et al.* 2001, p. 1068). *Saprolegnia* has been reported in the southern DPS of the mountain yellow-legged frog (North 2012, pers. comm.); however, its prevalence within the Sierran range of the mountain yellow-legged frog complex and associated influence on population dynamics (if any) are unknown.

Other pathogens of concern for amphibian species include ranaviruses (Family Iridoviridae). Mao *et al.* (1999, pp. 49–50) isolated identical iridoviruses from co-occurring populations of the threespine stickleback (*Gasterosteus aculeatus*) and the red-legged frog (*Rana aurora*), indicating that infection by a given virus is not limited to a single species, and that iridoviruses can infect animals of different taxonomic classes. This suggests that virus-hosting trout introduced into mountain yellow-legged frog habitat may be a vector for amphibian viruses. Recreationists also may contribute to the spread of pathogens between water bodies and populations via clothing and fishing equipment. However, definitive mechanisms for disease transmission to the mountain yellow-legged frog remain unknown. No viruses were detected in the mountain yellow-legged frogs that Fellers *et al.* (2001, p. 950) analyzed for Bd. In Kings Canyon National Park, Knapp (2002a, p. 20) found mountain yellow-legged frogs showing symptoms preliminarily attributed to a ranavirus. To date, ranaviruses remain a concern for the mountain yellow-legged frog complex, but there is insufficient evidence to indicate they are negatively affecting populations.

It is unknown whether amphibian pathogens in the high Sierra Nevada have always coexisted with amphibian populations or if the presence of such pathogens is a recent phenomenon. However, it has been suggested that the susceptibility of amphibians to pathogens may have recently increased in response to anthropogenic

environmental disruption (Carey 1993, pp. 355–360; Blaustein *et al.* 1994b, p. 253; Carey *et al.* 1999, p. 7). This hypothesis suggests that environmental changes may be indirectly responsible for certain amphibian die-offs due to immune system suppression of tadpoles or post-metamorphic amphibians (Carey 1993, p. 358; Blaustein *et al.* 1994b, p. 253; Carey *et al.* 1999, p. 7–8). Pathogens such as *Aeromonas hydrophila*, which are present in fresh water and in healthy organisms, may become more of a threat, potentially causing localized amphibian population die-offs when the immune systems of individuals within the host population are suppressed (Carey 1993, p. 358; Carey and Bryant 1995, p. 14).

The contribution of Bd as an environmental stressor and limiting factor on mountain yellow-legged frog population dynamics is currently extremely high, and it poses a significant future threat to remnant uninfected populations in the southern Sierra Nevada. Its effects are most dramatic following the epidemic stage as it spreads across newly infected habitats; massive die-off events follow the spread of the fungus, and it is likely that survival through metamorphosis is substantially reduced even years after the initial epidemic (Rachowicz *et al.* 2006, pp. 1679–1680). The relative impact from other diseases and the interaction of other stressors and disease on the immune systems of mountain yellow-legged frogs remains poorly documented to date.

In summary, based on the best available scientific and commercial information, we consider the threats of predation and disease to be significant, ongoing threats to the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog. These threats include amphibian pathogens (most specifically, the chytrid fungus) and predation by introduced fishes, two primary driving forces leading to population declines in the mountain yellow-legged frog complex. These are highly prevalent threats, and they are predominant limiting factors hindering population viability and precluding recovery across the ranges of the mountain yellow-legged frog complex.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In determining whether the inadequacy of regulatory mechanisms constitutes a threat to the mountain yellow-legged frog complex, we analyzed the existing Federal and State laws and regulations that may address the threats to these species or contain relevant protective measures. Regulatory mechanisms are typically nondiscretionary and enforceable, and may preclude the need for listing if such mechanisms are judged to adequately address the threat(s) to the species such that listing is not warranted. Conversely, threats on the landscape are not addressed where existing regulatory mechanisms are not adequate (or when existing mechanisms are not adequately implemented or enforced).

Federal

Wilderness Act

The Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) established a National Wilderness Preservation System made up of federally owned areas designated by Congress as "wilderness" for the purpose of preserving and protecting designated areas in their natural condition. Within these areas, the Wilderness Act states, with limited exception to administer the area as wilderness, the following: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircrafts; (4) there can be no form of mechanical transport; and (5) no structure or installation may be built. A large number of mountain yellow-legged frog locations occur within wilderness areas managed by the USFS and NPS and, therefore, are afforded protection from direct loss or degradation of habitat by some human activities (such as, development, commercial timber harvest, road construction, some fire management actions). Livestock grazing and fish stocking are both permitted within designated wilderness areas.

National Forest Management Act of 1976

Under the National Forest Management Act of 1976, as amended (NFMA) (16 U.S.C. 1600 *et seq.*), the USFS is tasked to manage National Forest lands based on multiple-use, sustained-yield principles, and implement land and resource management plans (LRMP) on each National Forest to provide for a diversity of plant and animal communities. The purpose of an LRMP is to guide and set standards for all natural resource management activities for the life of the plan (10 to 15 years). NFMA requires the USFS to incorporate standards and guidelines into LRMPs. The 1982 planning regulations for implementing NFMA (47 FR 43026; September 30, 1982), under which all existing forest plans in the Sierra Nevada were prepared until recently, guided management of National Forests and required that fish and wildlife habitat on National Forest system lands be managed to maintain viable populations of existing native and desired nonnative vertebrate species in the planning area. A viable population is defined as a population of a species that continues to persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

On April 9, 2012, the USFS published a final rule (77 FR 21162) amending 36 CFR 219 to adopt new National Forest System land management regulations to guide the development, amendment, and revision of LRMPs for all Forest System lands. These revised regulations, which became effective on May 9, 2012, replace the 1982 planning rule. The 2012 planning rule requires that the USFS maintain viable populations of species of conservation concern at the discretion of regional foresters. This rule could thereby result in removal of the limited protections that are currently in place for mountain yellow-legged frogs under the Sierra Nevada Forest Plan Amendment (SNFPA), as described below.

Sierra Nevada Forest Plan Amendment

In 2001, a record of decision was signed by the USFS for the Sierra Nevada Forest Plan Amendment (SNFPA), based on the final environmental impact statement for the SNFPA effort and prepared under the 1982 NFMA planning regulations. The Record of Decision amends the USFS Pacific Southwest Regional Guide, the Intermountain Regional Guide, and the LRMPs for National Forests in the Sierra Nevada and Modoc Plateau. This document affects land management on all National Forests throughout the range of the mountain yellow-legged frog complex. The SNFPA addresses and gives management direction on issues pertaining to old forest ecosystems; aquatic, riparian, and meadow ecosystems; fire and fuels; noxious weeds; and lower west-side hardwood ecosystems of the Sierra Nevada. In January 2004, the USFS amended the SNFPA, based on the final supplemental environmental impact statement, following a review of fire and fuels treatments, compatibility with the National Fire Plan, compatibility with the Herger-Feinstein Quincy Library

Group Forest Recovery Pilot Project, and effects of the SNFPA on grazing, recreation, and local communities (USDA 2004, pp. 26–30).

Relevant to the mountain yellow-legged frog complex, the Record of Decision for SNFPA aims to protect and restore aquatic, riparian, and meadow ecosystems, and to provide for the viability of associated native species through implementation of an aquatic management strategy. The aquatic management strategy is a general framework with broad policy direction. Implementation of this strategy is intended to take place at the landscape and project levels. There are nine goals associated with the aquatic management strategy:

(1) The maintenance and restoration of water quality to comply with the Clean Water Act (CWA) and the Safe Drinking Water Act;

(2) The maintenance and restoration of habitat to support viable populations of native and desired nonnative riparian-dependent species, and to reduce negative impacts of nonnative species on native populations;

(3) The maintenance and restoration of species diversity in riparian areas, wetlands, and meadows to provide desired habitats and ecological functions;

(4) The maintenance and restoration of the distribution and function of biotic communities and biological diversity in special aquatic habitats (such as springs, seeps, vernal pools, fens, bogs, and marshes);

(5) The maintenance and restoration of spatial and temporal connectivity for aquatic and riparian species within and between watersheds to provide physically, chemically, and biologically unobstructed movement for their survival, migration, and reproduction;

(6) The maintenance and restoration of hydrologic connectivity between floodplains, channels, and water tables to distribute flood flows and to sustain diverse habitats;

(7) The maintenance and restoration of watershed conditions as measured by favorable infiltration characteristics of soils and diverse vegetation cover to absorb and filter precipitation, and to sustain favorable conditions of streamflows;

(8) The maintenance and restoration of instream flows sufficient to sustain desired conditions of riparian, aquatic, wetland, and meadow habitats, and to keep sediment regimes within the natural range of variability; and

(9) The maintenance and restoration of the physical structure and condition of streambanks and shorelines to minimize erosion and sustain desired habitat diversity.

If these goals of the aquatic management strategy are pursued and met, threats to the mountain yellow-legged frog complex resulting from habitat alterations could be reduced. However, the aquatic management strategy is a generalized approach that does not contain specific implementation timeframes or objectives, and it does not provide direct protections for the mountain yellow-legged frog. Additionally, as described above, the April 9, 2012, final rule (77 FR 21162) that amended 36 CFR 219 to adopt new National Forest System land management planning regulations could result in removal of the limited protections that are currently in place for mountain yellow-legged frogs under the SNFPA.

Federal Power Act

The Federal Power Act of 1920, as amended (FPA) (16 U.S.C. 791 *et seq.*) was enacted to regulate non-federal hydroelectric projects to support the development of rivers for energy generation and other beneficial uses. The FPA provides for cooperation between the Federal Energy Regulatory Commission (Commission) and other Federal agencies in licensing and relicensing power projects. The FPA mandates that each license includes conditions to protect, mitigate, and enhance fish and wildlife and their habitat affected by the project. However, the FPA also requires that the Commission give equal consideration to competing priorities, such as power and development, energy conservation, protection of recreational opportunities, and preservation of other aspects of environmental quality. Further, the FPA does not mandate protections of habitat or enhancements for fish and wildlife species, but provides a mechanism for resource agency recommendations that are incorporated into a license at the discretion of the Commission. Additionally, the FPA provides for the issuance of a license for the duration of up to 50 years, and the FPA contains no provision for modification of the project for the benefit of species, such as mountain yellow-legged frogs, before a current license expires.

Numerous mountain yellow-legged frog populations occur within developed and managed aquatic systems (such as reservoirs and water diversions) operated for the purpose of power generation and regulated by the FPA.

State

California Endangered Species Act

The California Endangered Species Act (CESA) (California Fish and Game Code, section 2080 *et seq.*) prohibits the unauthorized take of State-listed endangered or threatened species. CESA requires State agencies to consult with CDFG on activities that may affect a State-listed species, and mitigate for any adverse impacts to the species or its habitat. Pursuant to CESA, it is unlawful to import or export, take, possess, purchase, or sell any species or part or product of any species listed as endangered or threatened. The State may authorize permits for scientific, educational, or management purposes, and allow take that is incidental to otherwise lawful activities.

Recently, the California Fish and Game Commission approved the listing of the Sierra Nevada yellow-legged frog as a threatened species and the mountain yellow-legged frog (Statewide) as an endangered species under CESA (CDFG 2012, pp. 1–10). However, CDFG has not yet officially listed these species under CESA, and therefore both species remain candidate species under State law.

As a candidate species under CESA, the mountain yellow-legged frog complex receives the same protections as a listed species, with specified exceptions. However, CESA is not expected to provide adequate protection for the mountain yellow-legged frog complex given that the CDFG has currently approved take authorization for the Statewide stocking program under CESA for fish hatchery and stocking activities consistent with the joint Environmental Impact Statement/Environmental Impact Report (ICF Jones & Stokes 2010, App. K), wildland fire response and related vegetation management, water storage and conveyance activities, and forest practices and timber harvest (CDFG 2011a, pp. 2–3).

In 2001, CDFG revised fish stocking practices and implemented an informal policy on fish stocking in the range of the Sierra Nevada yellow-legged frog and northern DPS of the mountain yellow-legged frog. This policy directs that: (1) Fish will not be stocked in lakes with known populations of mountain yellow-legged frogs, nor in lakes that have not yet been surveyed for mountain yellow-legged frog presence; (2) waters will be stocked only with a fisheries management justification; and (3) the number of stocked lakes will be reduced over time. In 2001, the number of lakes stocked with fish within the range of the mountain yellow-legged

frog in the Sierra Nevada was reduced by 75 percent (Milliron 2002, pp. 6–7; Pert *et al.* 2002, pers. comm.). Water bodies within the same basin and 2 km (1.25 mi) from a known mountain yellow-legged frog population will not be stocked with fish unless stocking is justified through a management plan that considers all the aquatic resources in the basin, or unless there is heavy angler use and no opportunity to improve the mountain yellow-legged frog habitat (Milliron 2002a, p. 5). The Hatchery and Stocking Program Environmental Impact Report/ Environmental Impact Statement, finalized in 2010 (ICF Jones & Stokes 2010, Appendix K), outlines a decision approach to mitigate fish stocking effects on Sierra amphibians that prohibits fish stocking in lakes with confirmed presence of frogs using recognized survey protocols.

CDFG is in the process of developing management plans for basins within the range of the Sierra Nevada yellow-legged frog and the northern DPS of mountain yellow-legged frog (CDFG 2001, p. 1; Lockhart 2011, pers. comm.). The objectives of the basin plans specific to the mountain yellow-legged frog include management in a manner that maintains or restores native biodiversity and habitat quality, supports viable populations of native species, and provides for recreational opportunities that consider historical use patterns (CDFG 2001, p. 3). Under this approach, some lakes are managed primarily for the mountain yellow-legged frogs and other amphibian resources, with few or no angling opportunities, while lakes with high demand for recreational angling are managed primarily for angling purposes (CDFG 2001, p. 3).

Existing Federal and State laws and regulatory mechanisms currently offer some level of protection for the mountain yellow-legged frog complex.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

The mountain yellow-legged frog is sensitive to environmental change or degradation because it has an aquatic and terrestrial life history and highly permeable skin that increases exposure of individuals to substances in the water, air, and terrestrial substrates (Blaustein and Wake 1990, p. 203; Bradford and Gordon 1992. p. 9; Blaustein and Wake 1995, p. 52; Stebbins and Cohen 1995, pp. 227–228). Several natural or anthropogenically influenced factors, including contaminants, acid precipitation, ambient ultraviolet radiation, and climate change, have been implicated as contributing to amphibian declines (Corn 1994, pp. 62–63; Alford and Richards 1999, pp. 2–7). These factors have been studied to varying degrees specific to the mountain yellow-legged frog and are discussed below. There are also documented incidences of direct mortality of, or the potential for direct disturbance to, individuals from some activities already discussed; in severe instances, these actions may have population-level consequences.

Contaminants

Environmental contaminants have been suggested, and in some cases documented, to negatively affect amphibians by causing direct mortality (Hall and Henry 1992, pp. 66–67; Berrill *et al.* 1994, p. 663; 1995, pp. 1016–1018; Carey and Bryant 1995, p. 16; Relyea and Mills 2001, p. 2493); immune system suppression, which makes amphibians more vulnerable to disease (Carey 1993, pp. 358–360; Carey and Bryant 1995, p. 15; Carey *et al.* 1999, p. 9; Daszak *et al.* 1999, p. 741; Taylor *et al.* 1999, p. 540); disruption of breeding behavior and physiology (Berrill *et al.* 1994, p. 663; Carey and Bryant 1995, p. 16; Hayes *et al.* 2002, p. 5479); disruption of growth or development (Hall and Henry 1992, p. 66; Berrill *et al.* 1993, p. 537; 1994, p. 663; Berrill *et al.* 1995, pp. 1016–1018; Carey and Bryant 1995, p. 8; Berrill *et al.* 1998, pp. 1741–1744; Sparling *et al.* 2001, p. 1595; Brunelli *et al.* 2009, p. 135); and disruption of predator avoidance behavior (Hall and Henry 1992, p. 66; Berrill *et al.* 1993, p. 537; 1994, p. 663; Berrill *et al.* 1995, p. 1017; Carey and Bryant 1995, pp. 8–9; Berrill *et al.* 1998, p. 1744; Relyea and Mills 2001, p. 2493; Sparling *et al.* 2001, p. 1595).

Wind-borne pesticides that are deposited in the Sierra Nevada from upwind agricultural sources have been suggested as a cause of sublethal effects to amphibians (Cory *et al.* 1971, p. 3; Davidson *et al.* 2001, pp. 474–475; Sparling *et al.* 2001, p. 1591; Davidson 2004, p. 1892; Fellers *et al.* 2004, p. 2176). In 1998, more than 97 million kilograms (215 million pounds) of pesticides were reportedly used in California (California Department of Pesticide Regulation (CDPR) 1998, p. ix). Originating from the agriculture in California's Central Valley, and mainly from the San Joaquin Valley, where upwind agricultural activity is greatest, pesticides are passively transported eastward to the high Sierra Nevada where they have been detected in precipitation (rain and snow), air, dry deposition, surface water, plants, fish, and amphibians (including Pacific tree frogs (*Pseudacris regilla*) and mountain yellow-legged frogs) (Cory *et al.* 1970, p. 204; Zabik and Seiber 1993, p. 80; Aston and Seiber 1997, p. 1488; Datta *et al.* 1998, p. 829; McConnell *et al.* 1998, pp. 1910–1911; LeNoir *et al.* 1999, p. 2721; Sparling *et al.* 2001, p. 1591; Angermann *et al.* 2002, p. 2213; Fellers *et al.* 2004, pp. 2173–2174).

Spatial analysis of mountain yellow-legged frog population trends in the Sierra Nevada showed a strong positive association between population decline and areas with greater amounts of upwind agriculture (Davidson *et al.* 2002, pp. 1597–1598). Analysis of upwind pesticide use determined that pesticides may play a role in the decline of the mountain yellow-legged frog in pristine regions of the Sierra Nevada (Davidson and Knapp 2007, pp. 593–594). Although pesticide detections decrease with altitudinal gain, they have been detected at elevations in excess of 3,200 m (10,500 ft) (Zabik and Seiber 1993, p. 88; McConnell *et al.* 1998, p. 1908; LeNoir *et al.* 1999, p. 2721; Angermann *et al.* 2002, pp. 2210–2211).

Snow core samples from the Sierra Nevada contain a variety of contaminants from industrial and automotive sources, including excess hydrogen ions that are indicative of acidic precipitation, nitrogen and sulfur compounds (ammonium, nitrate, sulfite, and sulfate), and heavy metals (lead, iron, manganese, copper, and cadmium) (Laird *et al.* 1986, p. 275).

The pattern of recent frog extirpations in the southern Sierra Nevada corresponds with the pattern of highest concentration of air pollutants from automotive exhaust, and it has been suggested that this may be due to increases in nitrification (or other changes) caused by those pollutants (Jennings 1996, p. 940). Shinn *et al.* (2008, p. 186) suggested that mountain amphibians may be more sensitive to nitrite toxicity based on acute toxicity observed at low concentrations (less than 0.5 milligrams/liter in Iberian water frogs (*Pelophylax perezi*)). Macias and Blaustein (2007, p. 55) observed a synergistic effect (when the net effect of two things acting together exceeds the sum of both alone) in the common toad (*Bufo bufo*) where nitrite in combination with ultraviolet radiation (UV–B; 280 to 320 nanometers (11–12.6 microinches)) was up to seven times more lethal than mortality from either stressor alone (the synergy was four times the summed effect from both treatments alone in the Iberian water frog).

The correlative evidence between areas of pesticide (and other) contamination in the Sierra Nevada and areas of amphibian decline support

hypotheses that contaminants may present a risk to the mountain yellow-legged frog and could have contributed to the species' decline (Jennings 1996, p. 940; Sparling *et al.* 2001, p. 1591; Davidson *et al.* 2002. p. 1599; Davidson and Knapp 2007, p. 587). However, studies confirming exposure in remote locations to ecotoxicologically relevant concentrations of contaminants are not available to support this hypothesis.

To the contrary, efforts to date have found fairly low concentrations of many of the primary suspect constituents commonly indicating agricultural and industrial pollution (organochlorines, organophosphates/carbamates, polycyclic hydrocarbons). Bradford *et al.* (2010, p. 1064) observed a rapid decline in concentrations of endosulfan, chlorpyrifos, and DDE (among others) going out to 42 km (26 mi) linear distance from the valley floor in air, water, and tadpole tissues. These researchers also found relatively minute variation in concentrations among high-elevation study sites relative to the differences observed between the San Joaquin Valley and the nearest high-elevation sites. Essentially, sites beyond 42 km (26 mi) exhibited very low concentrations of measured compounds, which did not appreciably decrease with distance (Bradford *et al.* 2010, p. 1064). These observations make the contaminant decline hypotheses less tenable, and so windborne organic contaminants are currently considered minor contributors (if at all) to observed frog declines.

Acidic deposition has been suggested to contribute to amphibian declines in the western United States (Blaustein and Wake 1990, p. 204; Carey 1993, p. 357; Alford and Richards 1999, pp. 4–5). Acid precipitation has also been postulated as a cause of amphibian declines at high elevations in the Sierra Nevada (Bradford *et al.* 1994b, p. 156) because waters there are low in acid neutralizing capacity and, therefore, are susceptible to changes in water chemistry caused by acid deposition (Byron *et al.* 1991, p. 271). Extreme pH in surface waters of the Sierra Nevada is estimated at 5.0, with most high-elevation lakes having a pH of greater than 6 (Bradford *et al.* 1992, p. 374). Near Lake Tahoe, at an elevation of approximately 2,100 m (6,900 ft), precipitation acidity has increased significantly (Byron *et al.* 1991, p. 272). In surface waters of the Sierra Nevada, acidity increases and acid neutralizing capacity decreases during snow melt and summer storms, though rarely does pH drop below 5.4 (Nikolaidis *et al.* 1991, p. 339; Bradford and Gordon 1992, p. 73; Bradford *et al.* 1998, p. 2489). The mountain yellow-legged frog breeds shortly after snow melt; therefore, its most sensitive early life stages are exposed to acidification (Bradford and Gordon 1992, p. 9). Bradford *et al.* (1998, p. 2482) found that mountain yellow-legged frog tadpoles were sensitive to naturally acidic conditions, and that their distribution was significantly related to lake acidity (they were not found in lakes with a pH lower than 6).

Laboratory studies have documented sublethal effects (reduced growth) on mountain yellow-legged frog embryos at pH 5.25 (Bradford *et al.* 1992, p. 369). Survivorship of mountain yellow-legged frog embryos and tadpoles was negatively affected as acidity increased (at approximately pH 4.5 or lower); embryos were more sensitive to increased acidity than tadpoles (Bradford and Gordon 1992, p. 3; Bradford *et al.* 1992, pp. 374–375). Potential indirect effects via impacts to the larger pond community were suggested by the observation that mountain yellow-legged frogs, common microcrustaceans, and caddisfly larvae were rare or absent at lakes with lower pH, and community richness declined with decreasing pH (Bradford *et al.* 1998, p. 2478).

However, other studies do not support this hypothesis of acid deposition as a contributing factor to amphibian population declines in this area (Bradford and Gordon 1992, pp. 74–77; Bradford *et al.* 1992, p. 375; Corn and Vertucci 1992, p. 366; Bradford *et al.* 1994a, p. 326; 1994b, p. 160; Corn 1994, p. 61). The hypothesis of acidic deposition as a cause of mountain yellow-legged frog declines has been rejected by field experiments that failed to show differences in water chemistry parameters between occupied and unoccupied mountain yellow-legged frog sites (Bradford *et al.* 1994b, p. 160). Though acidity may have an influence on mountain yellow-legged frog abundance or distribution, it is unlikely to have contributed significantly to the species' decline, given the rarity of lakes acidified either by natural or anthropogenic sources (Bradford *et al.* 1998, pp. 2488–2489).

Collectively, contaminant risks to mountain yellow-legged frogs are likely a minor risk factor across the range of the species that does not represent a threat to the species at a population level. Frogs are sensitive to contaminants, although exposure to contaminants from upwind sources has not been substantiated. Localized exposure to upgradient or directly applied compounds is of theoretical concern. However, the overlap of extant populations and such land uses, and contribution of these management activities to aquatic pollution, is undocumented.

Ultraviolet Radiation

Melanic pigment on the upper surfaces of amphibian eggs and tadpoles protects these sensitive life stages against UV–B damage, an important protection for normal development of amphibians exposed to sunlight, especially at high elevations in clear and shallow waters (Perotti and Diéguez 2006, p. 2064). Blaustein *et al.* (1994c, p. 1793) observed decreased hatching success in several species of amphibian embryos (the mountain yellow-legged frog was not tested) exposed to increased UV–B radiation, and proposed that this may be a cause of amphibian declines.

Ambient UV–B radiation has increased at north temperate latitudes over the past 2 decades (Adams *et al.* 2001, p. 521). If UV–B is contributing to amphibian population declines, the declines would likely be greater at higher elevations and more southerly latitudes where the thinner atmosphere allows greater penetration (Davidson *et al.* 2001, p. 474; Davidson *et al.* 2002, p. 1589). In California, where there is a north-to-south gradient of increasing UV–B exposure, amphibian declines would also likely be more prevalent at southerly latitudes (Davidson *et al.* 2001, p. 474; Davidson *et al.* 2002, p. 1589). In a spatial test of the hypothesis that UV–B has contributed to the decline of the mountain yellow-legged frog in the Sierra Nevada, Davidson *et al.* (2002, p. 1598) concluded that patterns of this species' decline are inconsistent with the predictions of where UV–B-related population declines would occur. Greater numbers of extant populations of this species were present at higher elevations than at lower elevations, and population decline was greater in the northern portion of the species' range than it was in the southern portion.

Adams *et al.* (2005, p. 497) also found no evidence that the distribution of mountain yellow-legged frogs in lakes in Sequoia and Kings Canyon National Parks was determined by UV–B. Pahkala *et al.* (2003, p. 197) even observed enhanced tadpole growth rates in two of three amphibian species exposed to moderate amounts of UV–B. Vredenburg *et al.* (2010b, p. 509) studied the effects of field level exposures of UV–B on hatching success in mountain the yellow-legged frog, Yosemite toad, and Pacific tree frog and found only a small increase in time to hatching in one of three lakes for the mountain yellow-

legged frog. The authors suggested that amphibians occupying habitats with high UV–B exposure may have evolved mechanisms for coping with or avoiding the damaging UV rays. This is plausible, given that such a field level experiment was testing a persistent population, one that would logically be a survivor from past exposure (made up of tolerant individuals), and this level of experimental bias is inherent to experiments with such designs.

The UV–B hypothesis is controversial and has been the topic of much scientific debate. Support is undermined by lack of evidence linking experimental results to observed changes in abundance and distribution in the wild, and also the inability of proponents to document increased exposure in amphibian populations (Corn 2005, p. 60). In weighing the available evidence, UV–B does not appear to be a contributing factor to mountain yellow-legged frog population declines in the Sierra Nevada.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). The term "climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (for example, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has increased since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions (for these and other examples, see IPCC 2007a, p. 30 and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is "very likely" (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (for example, Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764, 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (for example, habitat fragmentation) (IPCC 2007a, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Global climate projections are informative and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (for example, IPCC 2007a, pp. 8–12). Therefore, we use downscaled projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to the spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). With regard to our analysis for the Sierra Nevada of California (and western United States), downscaled projections are available.

Variability exists in outputs from different climate models, and uncertainty regarding future GHG emissions is also a factor in modeling (PRBO 2011, p. 3). A general pattern that holds for many predictive models indicates northern areas of the United States will become wetter, and southern areas (particularly the Southwest) will become drier. These models also predict that extreme events, such as heavier storms, heat waves, and regional droughts, may become more frequent (Glick *et al.* 2011, p. 7). Moreover, it is generally expected that the duration and intensity of droughts will increase in the future (Glick *et al.* 2011, p. 45; PRBO 2011, p. 21).

The last century has included some of the most variable climate reversals documented, at both the annual and near-decadal scales, including a high frequency of El Niño (associated with more severe winters) and La Niña (associated with milder winters) events (reflecting drought periods of 5 to 8 years alternating with wet periods) (USDA 2001b, p. 33). Scientists have confirmed a longer duration climate cycle termed the Pacific Decadal Oscillation (PDO), which operates on cycles between 2 to 3 decades, and

generally is characterized by warm and dry (PDO positive) followed by cool and wet cycles (PDO negative) (Mantua *et al.* 1997, pp. 1069–1079; Zhang *et al.* 1997, pp. 1004–1018). Snowpack is seen to follow this pattern—heavier in the PDO negative phase in California, and lighter in the positive phase (Mantua *et al.* 1997, p. 14; Cayan *et al.* 1998, p. 3148; McCabe and Dettinger 2002, p. 24).

Mantua *et al.* (1997, pp. 15–19) observed a relationship in population trends in Pacific salmon that mirror the PDO. The last turn of this cycle was in 1977, towards a warm and dry phase for the western United States. If this interdecadal trend holds, indications are that we are currently trending back into a cooler and wetter phase in California. Given the impacts to climate (snowpack, and therefore, hydrology in the alpine system), and the extended duration of these cycles relative to generation time for these species, it is logical to presume that amphibian population trends (other things being equal) would also tend to track these cycles. Drost and Fellers (1996, p. 423) indicated that drought probably has an exacerbating or compounding effect in mountain yellow-legged frog complex population declines.

For the Sierra Nevada ecoregion, climate models predict that mean annual temperatures will increase by 1.8 to 2.4 °C (3.2 to 4.3 °F) by 2070, including warmer winters with earlier spring snowmelt and higher summer temperatures. However, it is expected that temperature and climate variability will vary based on topographic diversity (for example, wind intensity will determine east versus west slope variability) (PRBO 2011, p. 18). Mean annual rainfall is projected to decrease from 9.2–33.9 cm (3.6–13.3 in) by 2070; however, projections have high uncertainty and one study predicts the opposite effect (PRBO 2011, p. 18). Given the varied outputs from differing modeling assumptions, and the influence of complex topography on microclimate patterns, it is difficult to draw general conclusions about the effects of climate change on precipitation patterns in the Sierra Nevada (PRBO, 2011, p. 18). Snowpack is, by all projections, going to decrease dramatically (following the temperature rise and more precipitation falling as rain). Higher winter streamflows, earlier runoff, and reduced spring and summer streamflows are projected, with increasing severity in the southern Sierra Nevada (PRBO 2011, pp. 20–22).

Snow-dominated elevations from 2,000–2,800 m (6,560–9,190 ft) will be the most sensitive to temperature increases, and a warming of 5 °C (9 °F) is projected to shift center timing (the measure when half a stream's annual flow has passed a given point in time) to more than 45 days earlier in the year as compared to the 1961–1990 baseline (PRBO 2011, p. 23). Lakes, ponds, and other standing waters fed by snowmelt or streams may dry out or be more ephemeral during the non-winter months (PRBO 2011, p. 24). This pattern could influence ground water transport, and springs may be similarly depleted, leading to lower lake levels.

Vulnerability of species to climate change is a function of three factors: Sensitivity of a species or its habitat to climate change, exposure of individuals to such physical changes in the environment, and their capacity to adapt to those changes (Glick *et al.* 2011, pp. 19–22). Critical sensitivity elements broadly applicable across organizational levels (from species through habitats to ecosystems) are associated with physical variables, such as hydrology (timing, magnitude, and volume of waterflows), fire regime (frequency, extent, and severity of fires), and wind (Glick *et al.* 2011, pp. 39–40). Species-level sensitivities generally include physiological factors, such as changes in temperature, moisture, or pH as they influence individuals; these also include dependence on sensitive habitats, ecological linkages to other species, and changes in phenology (timing of key life-history events) (Glick *et al.* 2011, pp. 40–41).

Exposure to environmental stressors renders species vulnerable to climate change impacts, either through direct mechanisms (for example, physical temperature extremes or changes in solar radiation), or indirectly through impacts upon habitat (hydrology; fire regime; or abundance and distribution of prey, competitors, or predator species). A species' capacity to adapt to climate change is increased by behavioral plasticity (the ability to modify behavior to mitigate the impacts of the stressor), dispersal ability (the ability to relocate to meet shifting conditions), and evolutionary potential (for example, shorter-lived species with multiple generations have more capacity to adapt through evolution) (Glick *et al.* 2011, pp. 48–49).

The International Union for Conservation of Nature describes five categories of life-history traits that render species more vulnerable to climate change (Foden *et al.* 2008 in Glick *et al.* 2011, p. 33): (1) Specialized habitat or microhabitat requirements, (2) narrow environmental tolerances or thresholds that are likely to be exceeded under climate change, (3) dependence on specific triggers or cues that are likely to be disrupted (for example, rainfall or temperature cues for breeding, migration, or hibernation), (4) dependence on interactions between species that are likely to be disrupted, and (5) inability or poor ability to disperse quickly or to colonize more suitable range. We apply these criteria in this proposed rule to assess the vulnerability of mountain yellow-legged frogs to climate change.

The mountain yellow-legged frog is not necessarily a habitat specialist, although it does depend on fishless high mountain lakes with particular properties necessary to sustain a multi-year life cycle. As a species that inhabits areas with relative climate extremes, some conditions may directly push mountain yellow-legged frogs past physiological or ecological tolerance thresholds, and therefore enhance risk from the effects of climate change. For example, the increased severity of some winter storms may freeze lakes to greater depths than is historically typical. Severe winters (typical of El Niño Southern Oscillation years and PDO negative decades) would force longer hibernation times and could stress mountain yellow-legged frogs by reducing the time available for them to feed and breed. The deeper lakes that once supported frog populations (but now harbor introduced trout) are no longer available as refuge for frogs in a drier climate with possible severe cold winters. It is important to note that these episodic stressors may be infrequent, but they are important to long-lived species with small populations.

In summer, reduced snowpack and enhanced evapotranspiration following higher temperatures may dry out ponds that otherwise would have sustained rearing tadpoles (Lacan *et al.* 2008, p. 220), and may also reduce fecundity (egg production) (Lacan *et al.* 2008, p. 222). Lacan *et al.* (2008, p. 211) observed most frog breeding in the smaller, fishless lakes of Kings Canyon National Park, lakes that are shallow and prone to summer drying. Thus, climate change will likely reduce available breeding habitat for mountain yellow-legged frogs and lead to greater frequency of stranding and death of tadpoles (Corn 2005, p. 64; Lacan *et al.* 2008, p. 222).

Earlier snowmelt is expected to cue breeding earlier in the year. The advance of this primary signal for breeding phenology in montane and boreal habitats (Corn 2005, p. 61) may have both positive and negative effects. Additional time for growth and development may render larger individuals more fit to overwinter;

however, earlier breeding may also expose young tadpoles (or eggs) to killing frosts in more variable conditions of early spring (Corn 2005, p. 60).

It is unclear if there are dependencies upon other species with which mountain yellow-legged frogs interact that may be affected either positively or negatively by climate change. Climate change may alter invertebrate communities (PRBO 2011 p. 24). In one study, an experimental increase in stream temperature was shown to decrease density and biomass of invertebrates (Hogg and Williams 1996, p. 401). Thus, climate change might have a negative impact on the mountain yellow-legged frog prey base.

Indirect effects from climate change may lead to greater risk to mountain yellow-legged frog population persistence. For example, fire intensity and magnitude are projected to increase (PRBO 2011, pp. 24–25), and therefore the contribution and influence of this stressor upon frog habitat and populations will increase. Climate change may alter lake productivity through changes in water chemistry, the extent and timing of mixing, and nutrient inputs from increased fires, all of which may influence community dynamics and composition (Melack *et al.* 1997, p. 971; Parker *et al.* 2008, p. 12927). These changes may not all be negative; for example, water chemistry and nutrient inputs, along with warmer summer temperatures, could increase net primary productivity in high mountain lakes to enhance frog food sources.

Changes in temperature may also affect virulence of pathogens (Carey 1993, p. 359), which could make mountain yellow-legged frogs more susceptible to disease. Climate change could also affect the distribution of pathogens and their vectors, exposing mountain yellow-legged frogs (potentially with weakened immune systems as a result of other environmental stressors) to new pathogens (Blaustein *et al.* 2001, p. 1808). Climate change (warming) has been hypothesized as a driver for the range shift of Bd (Pounds *et al.* 2006, p. 161; Bosch *et al.* 2007, p. 253). However, other work has indicated that survival and transmission of Bd is more likely facilitated by cooler and wetter conditions (Corn 2005, p. 63). Fisher *et al.* (2009, p. 299) present a review of information available to date, and evaluate the competing hypotheses regarding Bd dynamics and present some cases that suggest a changing climate can change the host-pathogen dynamic to a more virulent state.

The key risk factor for climate change impacts on mountain yellow-legged frogs is likely the combined effect of reduced water levels in high mountain lakes and ponds and the relative inability of individuals to disperse and colonize across longer distances in order to occupy more favorable habitat conditions (if they exist). Although such adaptive range shifts have been observed in some plant and animal species, they have not been reported in amphibians. The changes observed in amphibians to date have been more associated with changes in timing of breeding (phenology) (Corn 2005, p. 60). This reduced adaptive capacity for mountain yellow-legged frogs is a function of high site fidelity and the extensive habitat fragmentation due to the introduction of fishes in many of the more productive and persistent high mountain lake habitats and streams that constitute critical dispersal corridors throughout much of the frog's range (see Factor C discussion above).

An increase in the frequency, intensity, and duration of droughts caused by climate change may have compounding effects on populations of mountain yellow-legged frogs already in decline. In situations where other stressors have resulted in the isolation of mountain yellow-legged frogs in marginal habitats factors (such as introduced fish), localized mountain yellow-legged frog population crashes or extirpations resulting from drought may exacerbate their isolation and preclude natural recolonization (Bradford *et al.* 1993, p. 887; Drost and Fellers 1996, p. 424; Lacan *et al.* 2008, p. 222). Climate change represents a substantial future threat to the persistence of mountain yellow-legged frog populations.

Direct and Indirect Mortality

Other risk factors include direct and indirect mortality as an unintentional consequence of activities within mountain yellow-legged frog habitat. Recreation may threaten all life stages of the mountain yellow-legged frog through trampling by humans, packstock, or vehicles, including off-highway vehicles; harassment by pets; and habitat degradation associated with these various land uses (Cole and Landres 1996, p. 170; USDA 2001b, pp. 213–214). Fire management activities probably lead to some direct mortality and have the potential to disrupt behavior. Fire retardant chemicals contain nitrogen compounds and surfactants (chemical additive used to facilitate application). Laboratory tests have shown that surfactants or ammonia byproducts can cause mortality in fishes and aquatic invertebrates (Hamilton *et al.* 1996, pp. 132–144); similar effects are possible in amphibians. Calfee and Little (2003, pp. 1529–1530) report that southern leopard frogs (*Rana sphenocephala*) and boreal toads (*Bufo boreas*) are more tolerant than rainbow trout (*Oncorhynchus mykiss*) to fire retardant chemicals; however the acute toxicity of some compounds is enhanced by ultraviolet light, which may harm amphibians at environmentally relevant concentrations. Therefore, if fire retardant chemicals are dropped in or near mountain yellow-legged frog habitat, they could have negative effects on individuals. The prevalence of this impact is undetermined, but this threat may be sporadically significant. Roads create the potential for direct mortality of amphibians by vehicle strikes (deMaynadier and Hunter 2000, p. 56) and the possible introduction of contaminants into new areas; however, most extant populations are not located near roads. Collectively, direct mortality risks to mountain yellow-legged frogs are likely of sporadic significance. They may be important incidentally on a site-specific basis, but are likely of low prevalence across the range of the species.

Small Population Size

Remaining populations for both the Sierra Nevada yellow-legged frog and the mountain yellow-legged frog are small in many localities (CDFG, unpubl. data). Brown *et al.* (2011, p. 24) reported that about 90 percent of watersheds have fewer than 10 adults and 80 percent have fewer than 10 subadults and 100 tadpoles. Remnant populations in the far northern extent of the range for the Sierra Nevada yellow-legged frog (from Lake Tahoe north) and the southern extent of the Sierran populations of the mountain yellow-legged frog (south of Kings Canyon National Park) currently also exhibit very low abundances (CDFG, unpubl. data).

Compared to large populations, small populations are more vulnerable to extirpation from environmental, demographic, and genetic stochasticity (random natural occurrences), and unforeseen (natural or unnatural) catastrophes (Shaffer 1981, p. 131). Environmental stochasticity refers to annual variation in birth and death rates in response to weather, disease, competition, predation, or other factors external to the population (Shaffer 1981, p. 131). Small populations may be less able to respond to natural environmental changes (Kéry *et al.* 2000, p. 28), such as a prolonged drought or even a significant natural

predation event. Periods of prolonged drought are more likely to have a significant effect on mountain yellow-legged frogs because drought conditions occur on a landscape scale and all life stages are dependent on habitat with a perennial water source. Demographic stochasticity is random variability in survival or reproduction among individuals within a population (Shaffer 1981, p. 131) and could increase the risk of extirpation of the remaining populations. Genetic stochasticity results from changes in gene frequencies due to the founder effect (loss of genetic variation that occurs when a new population is established by a small number of individuals) (Reiger 1968, p. 163); random fixation (the complete loss of one of two alleles in a population, the other allele reaching a frequency of 100 percent) (Reiger 1968, p. 371); or inbreeding depression (loss of fitness or vigor due to mating among relatives) (Soulé 1980, p. 96). Additionally, small populations generally have an increased chance of genetic drift (random changes in gene frequencies from generation to generation that can lead to a loss of variation) and inbreeding (Ellstrand and Elam 1993, p. 225).

Allee effects (Dennis 1989, pp. 481–538) occur when a population loses its positive stock-recruitment relationship (when population is in decline). In a declining population, an extinction threshold or "Allee threshold" (Berec *et al.* 2006, pp. 185–191) may be crossed, where adults in the population either cease to breed or the population becomes so compromised that breeding does not contribute to population growth. Allee effects typically fall into three broad categories (Courchamp *et al.* 1999, pp. 405–410): Lack of facilitation (including low mate detection and loss of breeding cues), demographic stochasticity, and loss of heterozygosity (a measure of genetic variability). Environmental stochasticity amplifies Allee effects (Dennis 1989, pp. 481–538; Dennis 2002, pp, 389–401). The Allee effects of demographic stochasticity and loss of heterozygosity are likely as mountain yellow-legged frog populations continue to diminish. Lack of facilitation is a possible threat, though less probable as frogs can vocalize to advertise presence.

The extinction risk of a species represented by few small populations is magnified when those populations are isolated from one another. This is especially true for species whose populations normally function in a metapopulation structure, whereby dispersal or migration of individuals to new or formerly occupied areas is necessary. Connectivity between these populations is essential to increase the number of reproductively active individuals in a population; mitigate the genetic, demographic, and environmental effects of small population size; and recolonize extirpated areas. Additionally, fewer populations increase the risk of extinction.

The combination of low numbers with the other extant stressors of disease, fish persistence, and potential for climate extremes could have adverse consequences for the mountain yellow-legged frog complex as populations approach the Allee threshold. Small population size is currently a significant threat to most populations of mountain yellow-legged frogs across the range of the species.

Cumulative Impacts of Extant Threats

Stressors may act additively or synergistically. An additive effect would mean that an accumulation of otherwise low threat factors acting in combination may collectively result in individual losses that are meaningful at the population level. A synergistic effect is one where the interaction of one or more stressors together leads to effects greater than the sum of those individual factors combined. Further, the cumulative effect of multiple added stressors can erode population viability over successive generations and act as a chronic strain on the viability of a species, resulting in a progressive loss of populations over time. Such interactive effects from compounded stressors thereby act synergistically to curtail the viability of frog metapopulations and increase the risks of extinction.

It is difficult to predict the precise impact of the cumulative threat represented by the relatively novel Bd epidemic across a landscape already fragmented by fish stocking. The singular threat of the Bd epidemic wave in the uninfected populations of the mountain yellow-legged frog complex in the southern Sierra Nevada could extirpate those populations as the lethal pathogen spreads. A compounding effect of disease-caused extirpation is that recolonization may never occur because streams connecting extirpated sites to extant populations now contain introduced fishes, which act as barriers to frog movement within metapopulations. This isolates the remaining populations of mountain yellow-legged frogs from one another (Bradford 1991, p. 176; Bradford *et al.* 1993, p. 887). It is logical to presume that the small, fragmented populations left in the recent wake of Bd spread through the majority of the range of the Sierra Nevada yellow-legged frog may experience further extirpations as surviving adults eventually die, and recruitment into the breeding pool from the Bd-positive subadult class is significantly reduced. These may be exacerbated by the present and growing threat of climate change, although this effect may take years to materialize.

In summary, based on the best available scientific and commercial information, we consider other natural and manmade factors to be substantial ongoing threats to the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog. These include high, prevalent risk associated with climate change and small population sizes, and the associated risk from the additive or synergistic effects of these two stressors interacting with other acknowledged threats, including habitat fragmentation and degradation (see Factor A), disease (see Factor C), or other threats currently present but with low relative contribution in isolation.

Proposed Determination for the Sierra Nevada Yellow-legged Frog

We have carefully assessed the best scientific information available regarding the past, present, and future threats to the Sierra Nevada yellow-legged frog.

There has been a rangewide decline in the geographic extent of populations, and losses of populations have continued in recent decades. There are now fewer, increasingly isolated populations maintaining viable recruitment (entry of post-metamorphic frogs into the breeding population). Coupled with the observation that remnant populations are also numerically smaller (in some cases consisting of few individuals), this reduction in occupancy and population density across the landscape suggests significant losses in metapopulation viability and high attendant risk to the overall population. The impacts of the declines on population resilience are two-fold: (1) The geographic extent and number of populations are reduced across the landscape, resulting in fewer and more isolated populations (the species is less able to withstand population stressors and unfavorable conditions exist for genetic exchange or dispersal to unoccupied areas (habitat fragmentation)); and (2) species abundance (in any given population) is reduced, making local extirpations much more likely (decreased population viability). Knapp *et al.* (2007b, pp. 1–2) estimated a 10 percent decline per year in the number of remaining mountain yellow-legged frog populations, and argued for the listing of the species as

endangered based on this observed rate of population loss.

The best available science indicates the cause of the decline of the Sierra Nevada yellow-legged frog is the introduction of fishes to its habitat (Factor A, C) to support recreational angling. Water bodies throughout this range have been intensively stocked with introduced fish (principally trout). It is a threat of significant influence, and although it more directly impacted populations historically, it remains prevalent today because fish persist in many high-elevation habitats even where stocking has ceased. Competitive exclusion and predation by fish have reduced frog populations in stocked habitats, and left remnant populations isolated. It is important to recognize that throughout the vast majority of its range, Sierra Nevada yellow-legged frogs did not co-evolve with any species of fish, as they predominantly occur in water bodies above natural fish barriers. Further, the introduction of fish has generally restricted remaining Sierra Nevada yellow-legged frog populations to more marginal habitats, thereby increasing the likelihood of localized extinctions. Recolonization in these situations is difficult for a highly aquatic species with high site fidelity and unfavorable dispersal conditions. Climate change is likely to exacerbate these other threats and further threaten population resilience.

Historical grazing activities may have modified the habitat of the Sierra Nevada yellow-legged frog throughout much of its range (Factor A). Grazing pressure has been significantly reduced from historical levels, although grazing may continue to contribute to some localized degradation and loss of suitable habitat. The effects of recreation, dams and water diversions, roads, timber harvests, and fire management activities on the Sierra Nevada yellow-legged frog are not well-studied, and although they may negatively affect frog populations and their habitat, these effects have not been implicated as primary factors in the decline of this species. However, these activities may be factors of secondary importance in the decline of the Sierra Nevada yellow-legged frog and the modification of its habitat. Although these threat factors are of relatively lower current magnitude and imminence, part of their lesser studied, more uncertain contribution to population dynamics may be a function of timing. Historical losses may already be realized in areas where impacts are greater, and these would not be documented in studies that have mostly been conducted over the last 2 to 3 decades amongst surviving populations. During this same time interval, management practices by Federal agencies with jurisdiction within the current range of the Sierra Nevada yellow-legged frog have generally improved.

Sierra Nevada yellow-legged frogs are vulnerable to multiple pathogens, whose effects range from low levels of infection within persistent populations to disease-induced extirpation of entire populations. The Bd epidemic has caused localized extirpations of Sierra Nevada yellow-legged frog populations and associated significant declines in numbers of individuals. Though Bd was only recently discovered to affect the Sierra Nevada yellow-legged frog, it appears to infect populations at much higher rates than other diseases. The imminence of this risk to currently uninfected habitats is immediate, and the potential effects severe. The already-realized effects to the survival of sensitive amphibian life stages in Bd-positive areas are well-documented. Although some populations survive the initial Bd wave, survival rates of metamorphs and population viability are markedly reduced relative to historical (pre-Bd) norms.

The main and interactive effects of these various risk factors have acted to reduce Sierra Nevada yellow-legged frog populations to a small fraction of its historical range and reduce population abundances significantly throughout most of its range. Remaining areas in the southern Sierra Nevada that have yet to be impacted by Bd are at immediate and severe risk.

Given the life history of this species, dispersal, recolonization, and genetic exchange are largely precluded by the fragmentation of habitat common throughout its current range as a result of fish introductions. Frogs that may disperse are susceptible to hostile conditions in many circumstances. In essence, Sierra Nevada yellow-legged frogs have been marginalized by historical fish introductions and, likely, other land management activities. Populations have recently been decimated by Bd, and the accumulation of other stressors (such as anticipated reduction of required aquatic breeding habitats with climate change and more extreme weather) upon a fragmented landscape make adaptation and recovery a highly improbable scenario without active intervention. The cumulative risk from these stressors to the persistence of the Sierra Nevada yellow-legged frog throughout its range is significant.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that the Sierra Nevada yellow-legged frog is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Specifically, these include habitat degradation and fragmentation under Factor A, predation and disease under Factor C, and climate change and the interaction of these various stressors cumulatively impacting small remnant populations under Factor E. There has been a rangewide reduction in abundance and geographic extent of surviving populations of the Sierra Nevada yellow-legged frog following decades of fish stocking, habitat fragmentation, and, most recently, a disease epidemic. Surviving populations are smaller and more isolated, and recruitment in Bd-positive populations is much reduced relative to historical norms. This combination of population stressors makes species persistence precarious throughout the currently occupied range in the Sierra Nevada.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the species, and have determined that the Sierra Nevada yellow-legged frog meets the definition of endangered under the Act, rather than threatened. This is because significant threats are occurring now and will occur in the future, at a high magnitude and across the species' entire range, making the species in danger of extinction at the present time. The rate of population decline remains high in the wake of chytrid epidemics, and core areas are at high, imminent risk. Population declines are expected to continue as maturing tadpoles succumb to Bd infection, and fragmented populations at very low abundances will face significant obstacles to recovery.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Sierra Nevada yellow-legged frog proposed for listing in this rule is restricted in its range, and the threats occur throughout the remaining occupied habitat. Therefore, we assessed the status of this species throughout its entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular

significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Proposed Determination for the Northern DPS of the Mountain Yellow-legged Frog

We have carefully assessed the best scientific information available regarding the past, present, and future threats to the northern DPS of the mountain yellow-legged frog.

There has been a rangewide decline in the geographic extent of populations, and losses of populations have continued in recent decades. There are now fewer, increasingly isolated populations maintaining viable recruitment (entry of post-metamorphic frogs into the breeding population). Coupled with the observation that remnant populations are also numerically smaller (in some cases consisting of few individuals), this reduction in occupancy and population density across the landscape suggests significant losses in metapopulation viability and high attendant risk to the overall population. The impacts of the declines on population resilience are two-fold: (1) The geographic extent and number of populations are reduced across the landscape, resulting in fewer and more isolated populations (the species is less able to withstand population stressors and unfavorable conditions exist for genetic exchange or dispersal to unoccupied areas (habitat fragmentation)); and (2) species abundance (in any given population) is reduced, making local extirpations much more likely (decreased population viability). Knapp *et al.* (2007b, pp. 1–2) estimated a 10 percent decline per year in the number of remaining mountain yellow-legged frog populations, and argued for the listing of the species as endangered based on this observed rate of population loss.

The best available science indicates the cause of the decline of the northern DPS of the mountain yellow-legged frog is the introduction of fishes to its habitat (Factor A, C) to support recreational angling. Water bodies throughout this range have been intensively stocked with introduced fish (principally trout). It is a threat of significant influence, and although it more directly impacted populations historically, it remains prevalent today because fish persist in many high-elevation habitats even where stocking has ceased. Competitive exclusion and predation by fish have reduced frog populations in stocked habitats, and left remnant populations isolated. It is important to recognize that throughout the vast majority of their range, mountain yellow-legged frogs did not co-evolve with any species of fish, as they predominantly occur in water bodies above natural fish barriers. Further, the introduction of fish has generally restricted remaining mountain yellow-legged frog populations to more marginal habitats, thereby increasing the likelihood of localized extinctions. Recolonization in these situations is difficult for a highly aquatic species with high site fidelity and unfavorable dispersal conditions. Climate change is likely to exacerbate these other threats and further threaten population resilience.

Historical grazing activities may have modified the habitat of the mountain yellow-legged frog throughout much of its range (Factor A). Grazing pressure has been significantly reduced from historical levels, although grazing may continue to contribute to some localized degradation and loss of suitable habitat. The effects of recreation, dams and water diversions, roads, timber harvests, and fire management activities on the mountain yellow-legged frog are not well-studied, and although they may negatively affect frog populations and their habitat, these effects have not been implicated as primary factors in the decline of this species. However, these activities may be factors of secondary importance in the decline of the mountain yellow-legged frog and the modification of its habitat. Although these threat factors are of relatively lower current magnitude and imminence, part of their lesser studied, more uncertain contribution to population dynamics may be a function of timing. Historical losses may already be realized in areas where impacts are greater, and these would not be documented in studies that have mostly been conducted over the last 2 to 3 decades amongst surviving populations. During this same time interval, management practices by Federal agencies with jurisdiction within the current range of the mountain yellow-legged frog have generally improved.

Mountain yellow-legged frogs are vulnerable to multiple pathogens, whose effects range from low levels of infection within persistent populations to disease-induced extirpation of entire populations. The Bd epidemic has caused localized extirpations of mountain yellow-legged frog populations and associated significant declines in numbers of individuals. Though Bd was only recently discovered to affect the mountain yellow-legged frog, it appears to infect populations at much higher rates than other diseases. The imminence of this risk to currently uninfected habitats is immediate, and the potential effects severe. The already-realized effects to the survival of sensitive amphibian life stages in Bd-positive areas are well-documented. Although some populations survive the initial Bd wave, survival rates of metamorphs and population viability are markedly reduced relative to historical (pre-Bd) norms.

The main and interactive effects of these various risk factors have acted to reduce the northern DPS of the mountain yellow-legged frog populations to a small fraction of its historical range and reduce population abundances significantly throughout most of its range. Remaining areas in the southern Sierra Nevada that have yet to be impacted by Bd are at immediate and severe risk.

Given the life history of this species, dispersal, recolonization, and genetic exchange are largely precluded by the fragmentation of habitat common throughout its current range as a result of fish introductions. Frogs that may disperse are susceptible to hostile conditions in many circumstances. In essence, mountain yellow-legged frogs have been marginalized by historical fish introductions and, likely, other land management activities. Populations have recently been decimated by Bd, and the accumulation of other stressors (such as anticipated reduction of required aquatic breeding habitats with climate change and more extreme weather) upon a fragmented landscape make adaptation and recovery a highly improbable scenario without active intervention. The cumulative risk from these stressors to the persistence of the mountain yellow-legged frog throughout its range is significant.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that the northern DPS of the mountain yellow-legged frog is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Specifically, these include habitat degradation and fragmentation under Factor A, predation and disease under Factor C, and climate change and the interaction of these various stressors cumulatively impacting small remnant populations under Factor E. There has been a rangewide reduction in abundance and geographic extent of surviving populations of the northern DPS of the

mountain yellow-legged frog following decades of fish stocking, habitat fragmentation, and, most recently, a disease epidemic. Surviving populations are smaller and more isolated, and recruitment in Bd-positive populations is much reduced relative to historical norms. This combination of population stressors makes species persistence precarious throughout the currently occupied range in the Sierra Nevada.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the species, and have determined that the northern DPS of the mountain yellow-legged frog, already endangered in the southern part of its range, meets the definition of endangered under the Act, rather than threatened. This is because significant threats are occurring now and will occur in the future, at a high magnitude and across the species' entire range, making the species in danger of extinction at the present time. The rate of population decline remains high in the wake of chytrid epidemics, and core areas are at high, imminent risk. The recent rates of decline for these populations are even higher than declines in the Sierra Nevada yellow-legged frog, and as Bd infects remaining core areas, population viability will be significantly reduced, and extirpations or significant population declines are expected. Population declines are further expected to continue as maturing tadpoles succumb to Bd infection, and fragmented populations at very low abundances will face significant obstacles to recovery. Therefore, on the basis of the best available scientific and commercial information, and the threats posed to these species under the listing factors above, we propose listing the northern DPS of the mountain yellow-legged frog as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The northern DPS of the mountain yellow-legged frog proposed for listing in this rule is restricted in its range, and the threats occur throughout the remaining occupied habitat. Therefore, we assessed the status of this DPS throughout its entire range in the Sierra Nevada of California. The threats to the survival of this DPS occur throughout its range in the southern Sierra Nevada and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the DPS throughout its entire range.

Status for Yosemite Toad

Background

In this section of the proposed rule, it is our intent to discuss only those topics directly relevant to the listing of the Yosemite toad (*Anaxyrus canorus*) as threatened.

Taxonomy

The Yosemite toad (*Anaxyrus canorus;* formerly *Bufo canorus*) was originally described by Camp (1916, pp. 59–62), and given the common name Yosemite Park toad. The word "canorus" means "tuneful" in Latin, referring to the male's sustained melodious trill, which attracts mates during the early spring breeding season. Later, Grinnell and Storer (1924, pp. 657–660) referred to this species as the Yosemite toad when the species' range was found to extend beyond the boundaries of Yosemite National Park.

When he described the species, Camp noted similarities in appearance of the Yosemite toad and the western toad (Camp 1916, pp. 59–62). Based on general appearance, structure, and distribution, it appeared that the western toad and the Yosemite toad were closely related (Myers 1942, p. 10; Stebbins 1951, pp. 245–248; Mullally 1956b, pp. 133–135; Savage 1958, pp. 251–253). The close relationship between the western toad and the Yosemite toad is also supported by studies of bone structure (Tihen 1962, pp. 1–50) and by the survivorship of hybrid toads produced by artificially crossing the two species (Blair 1959, pp. 427–453; 1963, pp. 1–16; 1964, pp. 181–192).

Camp (1916, pp. 59–62), using characteristics of the skull, concluded that *Bufo boreas*, *B. canorus*, and *B. nestor* (extinct) were more closely related to one another than to other North American toads (Family Bufonidae), and that these species comprised the most primitive group of *Bufo* in North America. Blair (1972, pp. 93–95) grouped *B. boreas*, *B. canorus*, black toads (*B. exsul*), and Amargosa toads (*B. nelsoni*) together taxonomically as the "boreas group." Subsequently, Frost *et al.* (2006, p. 297) divided the paraphyletic genus "Bufo" into three separate genera, assigning the North American toads to the genus *Anaxyrus*. This taxonomic distinction has been recently adopted by the American Society of Ichthyologists and Herpetologists, the Herpetologists' League, and the Society for the Study of Amphibians and Reptiles (Crother *et al.* 2008, p. 3).

Feder (1977, pp. 43–55) found Yosemite toads to be the most genetically distinct member of the boreas group based on samples from a limited geographic range. However, Yosemite toads hybridize with western toads in the northern part of their range (Karlstrom 1962, p. 84; Morton and Sokolski 1978, pp. 52–55). A genetic analysis of a segment of mitochondrial DNA from Yosemite toads was performed by Shaffer *et al.* (2000, pp. 245–257) using 372 toads from Yosemite and Kings Canyon National Parks. These data showed significant genetic differences in Yosemite toads between the two National Parks. They observed that genetic divergence among regionally proximate populations of Yosemite toads was high, implying low rates of genetic exchange. Their data also suggest that black toads are a nested subgroup within Yosemite toads, rather than a separate species, and that a group of western toad populations in the Oregon Cascades appears more closely related to Yosemite toads than their current classification would indicate. However, sufficient molecular evidence to change the taxonomic classification of these three species is not yet available.

Stephens (2001, pp. 1–62) examined mitochondrial DNA from 8 Yosemite toads (selected to represent the range of variability found in the Shaffer *et al.* (2000, pp. 245–257) study) and 173 western toads. This study indicated that *Bufo* in the Sierra Nevada occurs in northern and southern evolutionary groups, each of which includes both Yosemite toads and western toads (that is, toads of both species are more closely related to each other within an evolutionary group than they are to members of their own species in the other evolutionary group). Goebel *et al.* (2008, p. 223) also concluded that the Yosemite toad is paraphyletic, split between a northwest and southwest haplotype group.

Further genetic analysis of Yosemite toads is needed to fully understand the evolutionary history and appropriate taxonomic status of the Yosemite toad (Stephens 2001, pp. 1–62). Current information indicates that the range is segregated between northern and southern evolutionary groups. This information also indicates that genetic introgression (movement of genes into the native gene pool to create hybrid populations) is occurring from a closely related counterpart (likely over an extended period), possibly associated with range expansion and overlap with the western toad following reproductive isolation that occurred during the Pleistocene glaciation (Feder 1977, p. 43). It therefore appears that natural hybridization has occurred where

Yosemite toad and western toad ranges overlap. We have assessed the available information, and bave determined that the Yosemite toad is a valid species, following its current classification by the American Society of Ichthyologists and Herpetologists, the Herpetologists' League, and the Society for the Study of Amphibians and Reptiles (Crother *et al.* 2008, p. 3).

Species Description

Tbe Yosemite toad is moderately sized, with a snout-urostyle length (measured from the tip of the snout to the posterior edge of the urostyle, a bony structure at the posterior end of the spinal column) of 30–71 mm (1.2–2.8 in) with rounded to slightly oval paratoid glands (a pair of glands, one on each side of the head, that produce toxins) (Karlstrom 1962, pp. 21–23). The paratoid glands are less than the width of a gland apart (Stebbins 1985, pp. 71–72). A thin mid-dorsal stripe (on the middle of the back) is present in juveniles of both sexes. The stripe disappears or is reduced with age; this process takes place more quickly in males (Jennings and Hayes 1994, pp. 50–53). The iris of the eye is dark brown with gold iridophores (reflective pigment cells) (Jennings and Hayes 1994, pp. 50–53).

Male Yosemite toads are smaller than female Yosemite toads, with less conspicuous warts (Stebbins 1951, p. 246). Differences in coloration between males and females are more pronounced in the Yosemite toad than in any other North American frog or toad (Stebbins 1951, p. 246). Females have black spots or blotches edged with white or cream set against a grey, tan, or brown background color (Jennings and Hayes 1994, pp. 50–53). Males have a nearly uniform dorsal coloration of yellow-green to olive drab to darker greenish brown (Jennings and Hayes 1994, pp. 50–53). Karlstrom (1962, pp. 80–81) suggested that differences in coloration between the sexes evolved because they provide the Yosemite toad with protective coloration (camouflage). The uniform coloration of the adult males matches and blends with the silt and grasses that they frequent during the breeding season, whereas the young and females with disruptive coloration tend to use a wider range of habitats with broken backgrounds; thus, coloration may help conceal individual toads from predators.

Habitat and Life History

Yosemite toads are found in wet meadow habitats and lake shores surrounded by lodgepole (*Pinus contorta*) or whitebark (*P. albicaulis*) pines (Camp 1916, pp. 59–62). They are most often found in areas with thick meadow vegetation or patches of low willows (*Salix* spp.) (Mullally 1953, pp. 182–183). Liang (2010, p. 81) observed Yosemite toads most frequently associated with (in order of preference): wet meadows, alpine-dwarf scrub, red fir (*Abies magnifica*), water, lodgepole pine, and subalpine conifer habitats.

Yosemite toads were found as often at large as at small sites (Liang 2010, p. 19), suggesting that this species is capable of successfully utilizing small habitat patches. Liang also found that population persistence was greater at higher elevations, with an affinity for relatively flat sites with a southwesterly aspect (Liang 2010, p. 20). These areas receive higher solar radiation and are capable of sustaining hydric (wet), seasonally ponded, and mesic (moist) breeding and rearing habitat. The Yosemite toad is more common in areas with less variation in mean annual temperature, or more temperate sites with less climate variation (Liang 2010, pp. 21–22).

Adults are thougbt to be long-lived, and this factor allows for persistence in variable conditions and more marginal habitats where only periodic good years allow high reproductive success (USFS *et al.* 2009, p. 27). Females have been documented to reach 15 years of age, and males as many as 12 years (Kagarise Sherman and Morton 1993, p. 195); however the average longevity of the Yosemite toad in the wild is not known. Jennings and Hayes (1994, p. 52) indicated that females begin breeding at ages four to six, while males begin breeding at ages three to five.

Adults tend to breed at a single site and appear to have high site-fidelity (Liang 2010, p. 99), although individuals will move between breeding areas (Liang 2010, p. 52). Breeding habitat includes the edges of wet meadows and slow-flowing streams (Jennings and Hayes 1994, pp. 50–53). Tadpoles have also been observed in shallow ponds and shallow areas of lakes (Mullally 1953, pp. 182–183).

Males exit burrows first, and spend more time in breeding pools than females, who do not breed every year (Kagarise Sherman and Morton, 1993, p. 196). It is suggested that higher lipid storage in females, which enhances overwinter survival, also precludes the energetic expense of breeding every year (Morton 1981, p. 237). The Yosemite toad is a prolific breeder, laying many eggs immediately at snowmelt. This is accomplished in a short period of time, coinciding with water levels in meadow habitats and ephemeral pools they use for breeding. Female toads lay approximately 700–2,000 eggs in two strings (one from each ovary) (USFS *et al.* 2009, p. 21). Females may split their egg clutches within the same pool, or even between different pools, and may lay eggs communally witb other toads (USFS *et al.* 2009, p.22).

Eggs hatch within 3–15 days, depending on ambient water temperatures (Kagarise Sherman 1980, pp. 46–47; Jennings and Hayes 1994, p. 52). Tadpoles typically metamorphose around 40–50 days after fertilization, and are not known to overwinter (Jennings and Hayes 1994, p. 52). Tadpoles are black in color, tend to congregate together (Brattstrom 1962, pp. 38–46) in warm shallow waters during the day (Cunningham 1963, pp. 60–61), and then retreat to deeper waters at night (Mullaly 1953, p. 182). Rearing through metamorphosis takes approximately 5–7 weeks after eggs are laid (USFS *et al.* 2009, p. 25).

Reproductive success is dependent on the persistence of tadpole rearing sites and conditions for breeding, egg deposition, hatching, and rearing to metamorphosis (USFS *et al.* 2009, p. 23). Given their association with shallow, ephemeral habitats, Yosemite toads are susceptible to droughts and weather extremes. Abiotic factors leading to mortality (such as freezing or desiccation) appear to be more significant during the early life stages of toads, while biotic factors (such as predation) are probably more prominent factors during later life stages (USFS *et al.* 2009, p. 30). However, since adult toads lead a much more inconspicuous lifestyle, direct observation of adult mortality is difficult and it is usually not possible to determine causes of adult mortality.

Adult Yosemite toads are most often observed near water, but only occasionally in water (Mullally and Cunningham 1956b, pp. 57–67). Moist upland areas such as seeps and springheads are important summer non-breeding habitats for adult toads (Martin 2002, pp. 1–3). The majority of their life is spent in the upland habitats proximate to their breeding meadows. They use rodent burrows for overwintering and probably for temporary refuge during the summer (Jennings and Hayes 1994, pp. 50–53), and they spend most of their time in burrows (Liang 2010, p. 95). They also use spaces under surface objects, including logs and rocks, for temporary refuge (Stebbins 1951, pp. 245–248; Karlstrom 1962, pp. 9–10). Males and females also likely inhabit different areas and habitats when not breeding, and females tend to move farther from

breeding ponds than males (USFS *et al.* 2009, p. 28).

Yosemite toads can move farther than 1 km (0.63 mi) from their breeding meadows (average movement is 275 m (902 ft)), and they utilize terrestrial environments extensively (Liang 2010, p. 85). The average distance traveled by females is twice as far as males, and home ranges for females are 1.5 times greater than those for males (Liang 2010, p. 94). Movement into the upland terrestrial environment following breeding does not follow a predictable path, and toads tend to traverse longer distances at night, perhaps to minimize evaporative water loss (Liang 2010, p. 98). Martin (2008, p. 123) radio-tracked adult toads during the active season and found that on average toads traveled a total linear distance of of 494 m (1,620 ft) within the season, with minimum travel distance of 78 m (256 ft) and maximum of 1.76 km (1.09 mi).

Historical Range and Distribution

The historical range of the Yosemite toad in the Sierra Nevada extended from the Blue Lakes region north of Ebbetts Pass (Alpine County) to just south of Kaiser Pass in the Evolution Lake/Darwin Canyon area (Fresno County) (Jennings and Hayes 1994, pp. 50–53). Yosemite toad habitat historically spanned elevations from 1,460 to 3,630 m (4,790 to 11,910 ft) (Stebbins 1985, pp. 72; Stephens 2001, p. 12).

Current Range and Distribution

The current range of the Yosemite toad, at least in terms of overall geographic extent, remains largely similar to the historical range defined above (USFS *et al.* 2009, p. 41). However, within that range, toad habitats have been degraded and may be decreasing in area as a result of conifer encroachment and livestock grazing (see Factor A below). The vast majority of the Yosemite toad's range is within Federal land. Figure 2, Estimated Range of Yosemite Toad, displays a range map for the species.

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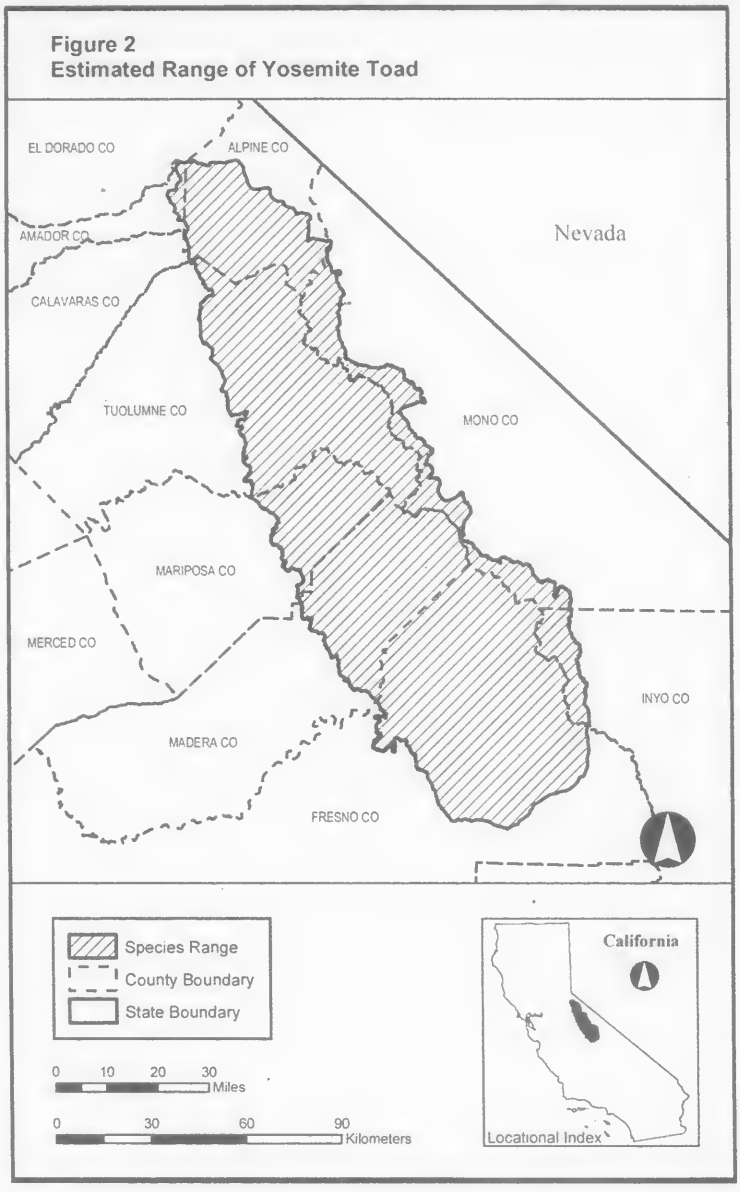

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Population Estimates and Status

Baseline data on the number and size of historical Yosemite toad populations are limited, and historic records are largely based on accounts from field notes, or pieced together through museum collections. Systematic survey information across the range of the species largely follows the designation of the Yosemite toad as a candidate species under the Act. From these recent inventories, Yosemite toads have been found at 469 localities collectively on six National Forests (more sites than previously known), indicating that the species is still widespread throughout its range (USFS *et al.* 2009, p. 40). These inventories were conducted to determine toad presence or absence (they were not censuses), and the referenced figure does not explicitly compare historic sites to recent surveys. Moreover, single-visit surveys of toads are unreliable as indices of abundance because timing is so critical to the presence of detectable life stages (USFS *et al.* 2009, p. 41; Liang 2010, p. 10). Given these considerations, conclusions about population trends, abundance, or extirpation rates are not possible relative to this specific dataset.

One pair of studies allows us to compare current distribution with historic distributions and indicates that large reductions have occurred. In 1915 and 1919, Grinnell and Storer (1924, pp. 657–660) surveyed for vertebrates at 40 sites along a 143-km (89-mi) west-to-east transect across the Sierra Nevada, through Yosemite National Park, and found Yosemite toads at 13 of those sites. Drost and Fellers (1996, pp. 414–425) conducted more thorough surveys, specifically for amphibians, at 38 of the Grinnell and Storer sites plus additional nearby sites in 1992. Drost and Fellers found that Yosemite toads were absent from 6 of 13 sites where they had been

found in the original Grinnell and Storer survey. Moreover, at the sites where they were present, Yosemite toads occurred in very low numbers relative to general abundance reported in the historical record (Grinnell and Storer 1924, pp. 657–660). Specifically, by the early 1990s, the species was either undetectable or had declined in numbers at 9 of 13 (69 percent) of the Grinnell and Storer (1924, pp. 657–660) sites.

Another study comparing historic and current occurrences also found a large decline in Yosemite toad distribution. In 1990, David Martin surveyed 75 sites throughout the range of the Yosemite toad for which there were historical records of the species' presence. This study found that 47 percent of historically occupied sites showed no evidence of any life stage of the species (Stebbins and Cohen 1995, pp. 213–215). This result suggests a rangewide decline to about one half of historical sites, based on occupancy alone.

A third study comparing historic and recent surveys indicates declines in Yosemite toad distribution. Jennings and Hayes (1994, pp. 50–53) reviewed the current status of Yosemite toads using museum records of historic and recent sightings, published data, and unpublished data and field notes from biologists working with the species. They estimated a loss of over 50 percent of former Yosemite toad locations throughout the range of the species (based on 144 specific sites).

The only long-term, site-specific population study for Yosemite toads documented a dramatic decline over 2 decades of monitoring. Kagarise Sherman and Morton (1993, pp. 186–198) studied Yosemite toads at Tioga Pass Meadow (Mono County, California) from 1971 through 1991 (with the most intensive monitoring through 1982). They documented a decline in the average number of males entering the breeding pools from 258 to 28 during the mid-1970s through 1982. During the same time period, the number of females varied between 45 and 100, but there was no apparent trend in number observed. During the 1980s, it appeared that both males and females continued to decline, and breeding activity became sporadic. By 1991, they found only one male and two egg masses. The researchers also found similar population declines in local nonbreeding habitat.

Kagarise Sherman and Morton (1993, pp. 186–198) also conducted occasional surveys of six other populations in the eastern Sierra Nevada. Five of these populations showed long-term declines that were evident beginning between 1978 through 1981, while the sixth population held relatively steady until the final survey in 1990, at which time it dropped. In 1991, E.L. Karlstrom revisited the site where he had studied a breeding population of Yosemite toads from 1954 to 1958 (just south of Tioga Pass Meadow within Yosemite National Park), and found no evidence of toads or signs of breeding (Kagarise Sherman and Morton 1993, pp. 190).

The most reliable information about Yosemite toad population status and trends is the USFS SNAMPH. This study is designed to provide statistical comparisons across 5-year monitoring cycles with at 134 watersheds (Brown *et al.* 2011, pp. 3–4). This approach allows researchers to assess trends for the entire range of the toad, rather than make year-to-year comparisons at limited survey sites (C. Brown 2012, pers. comm.). The results of this assessment indicate the species has declined from historical levels, with Yosemite toads occurring in only 12 percent of watersheds where they existed prior to 1990. This study also found that breeding currently occurs in an estimated 22 percent of watersheds within their current estimated range. Additionally, the study found that breeding was occurring in 81 percent of the watersheds that were occupied from 1990–2001, suggesting that the number of locations where breeding occurs has continued to decline (Brown *et al.* 2011, p. 4).

Moreover, overall abundances in the intensively monitored watersheds were very low (fewer than 20 males per meadow per year) relative to other historically reported abundances of the species (Brown *et al.* 2011, p. 4). Brown *et al.* (2011, p. 35) suggest that populations are now very small across the range of the species. They found only 18 percent of occupied survey watersheds rangewide had "large" populations during their monitoring over the past decade (more than 1,000 tadpoles or 100 of any other lifestage detected at the time of survey). The researchers interpret this data, in combination with documented local population declines from other studies (see above), to support the hypothesis that population declines have occurred rangewide (Brown *et al.* 2012, p. 11).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The habitat comprising the current range of the Yosemite toad is generally characterized by low levels of physical disturbance (there is little to no current development pressure). However, these areas are also generally more sensitive to perturbation and take longer to recover from disturbances due to reduced growing seasons and harsher environmental conditions. Past management and development activity has played a role in the degradation of certain habitat features within the Sierra Nevada. Anthropogenic activities within these habitats include grazing, timber harvest, fuels management, recreation, and water development. Collectively, these factors continue to degrade habitat conditions for the toad, although the contribution of this factor to population dynamics has probably lessened over time, perhaps because toad populations disappear from impacted areas first, but also through improved management practices implemented in recent decades.

Meadow Habitat Loss and Degradation

Some of the threat factors associated with grazing activities for the mountain yellow-legged frogs (see their Summary of Factors Affecting the Species section, above) also apply to Yosemite toads. However, there are differences based on the Yosemite toad's affinity for meadow and pool habitats versus the lakes and streams frequented by mountain yellow-legged frogs. Meadow habitat quality in the Western United States, and specifically the Sierra Nevada, has been degraded by various stressors over the last century (Stillwater Sciences 2008, pp. 1–53; Halpern *et al.* 2010, pp. 717–732; Vale 1987, pp. 1–18; Ratliff 1985, pp. *i*–48). These various stressors have contributed to erosion and stream incision, leading to meadow dewatering and encroachment by invasive vegetation (Menke et al. 1996, pp. 25–28; Linquist 2000, p. 2). The legacy of these impacts remains extant to this day

in the ecosystems of the high Sierra Nevada (Vankat and Major 1978, pp. 386–397).

Given the reliance of the Yosemite toad on these meadow and pool habitats for breeding, rearing, and adult survival, it is logical to conclude that the various stressors have had an indirect effect on the viability of Yosemite toad populations via degradation of their habitat. Loss of connectivity of habitats leads to further isolation and population fragmentation. Due to constraints of their physiology, low mobility, and higher site fidelity, many amphibian populations may be unable to recolonize after local extirpations (Blaustein *et al.* 1994a, p. 60).

Since the existence of meadows is largely dependent on their hydrologic setting, most meadow degradation is due fundamentally to hydrologic alterations (Stillwater Sciences 2008, p. 13). There are many drivers of hydrologic alterations in meadow ecosystems. Historic water development and ongoing management has physically changed the underlying hydrologic landscape. Diversion and irrigation ditches formed a vast network that altered local and regional stream hydrology. Timber harvest and associated road construction further affected erosion and sediment delivery patterns in rivers and meadow streams. Changes in the pre-settlement fire regime, fire suppression, and an increase in the frequency of large wildfires due to excessive fuel buildup, introduced additional disturbance pressure to the meadows of the Sierra Nevada (Stillwater Sciences 2008, p. 13). Many meadows now have downcut stream courses, compacted soils, altered plant community compositions, and diminished wildlife and aquatic habitats (SNEP 1996, pp. 120–121). Meadow dewatering by these changes within the watershed has facilitated these shifts in the vegetative community. Finally, climate variability has also played a role in the conifer encroachment.

Land uses causing channel erosion threaten Sierra Nevada meadows. These threats include erosive activities within the watershed upslope of the meadow, along with impacts from land use directly in the meadows themselves. Compaction of meadow soils by roads and/or intensive trampling (for example, overgrazing) can reduce infiltration, accelerate surface run-off, and thereby lead to channel incision (Menke et al. 1996, pp. 25–28). Mining, overgrazing, timber harvesting, and railroad and road construction and maintenance have contributed to watershed degradation, resulting in accelerated erosion, sedimentation in streams and reservoirs, meadow dewatering, and degraded terrestrial and aquatic habitats (Linquist 2000, p. 2). Deep incision has been documented in several meadows in the Sierra Nevada. One example is Halstead Meadow in Sequoia National Park, where headcutting exceeds 10 feet in many areas and is resulting in widening channels, erosion in additional meadows, and a lowered water table (Cooper 2006, p. 1).

The hydrologic effects of stream incision on the groundwater system may significantly impact groundwater storage, affecting late summer soil moisture and facilitating vegetation change (Bergmann 2004, pp. 24–31). For example, in the Last Chance Watershed in the northern Sierra Nevada, logging, overgrazing, and road/railroad construction have caused stream incision, resulting in dewatering of riparian meadow sediments and a succession from native wet meadow vegetation to sagebrush and dryland grasses (Loehide and Gorelick 2007, p. 2). A woody shrub (*Artemisia rothrockii*) is invading meadows as channel incision causes shallow-water-dependent herbs to die back, allowing shrub seedlings to establish in disturbed areas during wet years (Darrouzet-Nardi *et al.* 2006, p. 31).

Mountain meadows in the western United States and Sierra Nevada have also been progressively colonized by trees (Thompson 2007, p. 3; Vale 1987, p. 6), with an apparent pattern of encroachment during two distinct periods in the late 1800s and mid 1900s (Halpern *et al.* 2010, p. 717). This trend has been attributed to a number of factors, including climate, changes in fire regime, and cessation of sheep grazing (Halpern *et al.* 2010, pp. 717–718; Vale 1987, pp. 10–13), but analyses are limited to correlational comparisons and research results are mixed, so the fundamental contribution of each potential driver remains uncertain. We discuss the contribution of these factors to habitat loss and degradation for the Yosemite toad below.

Livestock Use (Grazing) Effects to Meadow Habitat

Grazing of livestock in Sierra Nevada meadows and riparian areas (rivers, streams, and adjacent upland areas that directly affect them) began in the mid-1700s with the European settlement of California (Menke *et al.* 1996, p. 7). Following the gold rush of the mid-1800s, grazing increased to a level exceeding the carrying capacity of the available range, causing significant impacts to meadow and riparian ecosystems (Meehan and Platts 1978, p. 275; Menke *et al.* 1996, p. 7). By the turn of the 20th century, high Sierra Nevada meadows were converted to summer rangelands for grazing cattle, sheep, horses, goats, and pigs, although the alpine areas were mainly grazed by sheep (Beesley 1996, pp. 7–8; Menke *et al.* 1996, p. 14). Stocking rates of both cattle and sheep in Sierra meadows in the late 19th and early 20th centuries were very heavy (Kosco and Bartolome 1981, pp. 248–250), and grazing severely degraded many meadows (Ratliff 1985, pp. 26–31; Menke *et al.* 1996, p. 14). Grazing impacts occurred rangewide, as cattle and sheep were driven virtually everywhere in the Sierra Nevada where forage was available (Kinney 1996, pp. 37–42; Menke *et al.* 1996, p. 14).

Grazing within the National Forests has continued into modern times, with reduction in activity (motivated by resource concerns, conflicts with other uses, and deteriorating range conditions) beginning in the 1920s. A brief wartime increase in the 1940s followed, before activity continued to be scaled back beginning in the 1950s through the early 1970s. However, despite these reductions, grazing still exceeded sustainable capacity in many areas (Menke *et al.* 1996, p. 9; UC 1996a, p. 115). Currently, approximately 33 percent of the estimated range of the Yosemite toad is within active USFS grazing allotments (USFS 2008, geospatial data). While stocking rates have been reduced or eliminated in most areas, many meadows remain disturbed from the historical period of heavy grazing, with legacy effects including eroded channels, non-vegetated patches from heavy trampling and grazing, altered plant composition, and reduced plant production (Vankat and Major 1978, pp. 386–397; Ratliff 1985, pp. ii–iii).

Livestock grazing in the Sierra Nevada has been widespread for so long that, in most places, no ungrazed areas are available to illustrate the natural condition of the habitat (Kattelmann and Embury 1996, pp. 16–18). Dull (1999, p. 899) conducted stratigraphic pollen analysis (identification of pollen in sedimentary layers) in mountain meadows of the Kern Plateau, and found significant vegetation changes attributable to sheep and cattle grazing by 1900 (though fire regime change was also implicated; see below). This degradation is widespread across the Sierra Nevada. Cooper 2006 (p. 1) reports that 50 to 80 percent of grazed meadows now dominated by dry meadow plants were formerly wet meadows (Cooper 2006, p. 1).

Overgrazing has been associated with accelerated erosion and gullying of

meadows (Kattelmann 1996, p. 13), which leads to siltation and more rapid succession of meadows. Grazing can cause erosion by disturbing the ground, damaging and reducing vegetative cover, and destroying peat layers in meadows, which lowers the groundwater table and summer flows (Armour *et al.* 1994, pp. 9–12; Martin 2002, pp. 1–3; Kauffman and Krueger 1984, pp. 431–434). Downcut channels, no longer connected to the historic, wide floodplains of the meadow, instead are confined within narrow, incised channels. Downstream, formerly perennial (year-round) streams often become intermittent or dry due to loss of water storage capacity in the meadow aquifers that formerly sustained them (Lindquist *et al.* 1997, pp. 7–8). Many examples exist like the one at Cottonwood Creek (in the Feather River watershed) where overgrazing of meadow vegetation and soil erosion of streambanks led to meadow channel incision (Linquist 2000, pp. 1–7; Odion *et al.* 1988, pp. 277–292, Schoenherr 1992, pp. 167–227).

Heavy grazing can alter vegetative species composition and contribute to lodgepole pine (*Pinus contorta*) invasion (Ratliff 1985, pp. 33–36). Lowering of the water table facilitates encroachment of conifers into meadows. Gully formation and lowering of water tables, changes in the composition of herbaceous vegetation, increases in the density of forested stands, and the expansion of trees into areas that formerly were treeless have been documented in California Wilderness areas and National Parks (Cole and Landres 1996, p. 171). This invasion has been attributed to sheep grazing, though the phenomenon has been observed on both ungrazed meadows and on meadows grazed continually since about 1900 (Ratliff 1985, p. 35), suggesting an interaction with other drivers (see "Fire Management Regime Effects to Meadow Habitats" and "Climate Effects to Meadow Habitat" below).

Due to the long history (Menke *et al.* 1996, Ch. 22 pp. 1–52) of livestock and packstock grazing in the Sierra Nevada and the lack of historical Yosemite toad population size estimates, it is impossible to establish a reliable quantitative estimate for the historical significance and contribution of grazing on Yosemite toad populations. However, because of the documented negative effects of livestock on Yosemite toad habitat, and the documented direct mortality caused by livestock, the decline of some populations of Yosemite toad has been attributed to the effects of livestock grazing (Jennings and Hayes 1994, pp. 50–53; Jennings 1996, pp. 921–944). Because Yosemite toad breeding habitat is in shallow waters at high elevation, the habitat is believed to be more vulnerable to changes in hydrology caused by grazing (Knapp 2002c, p. 1; Martin 2002, pp. 1–3; USFS *et al.* 2009, p. 62).

The influence of grazing on toad populations in recent history is uncertain, despite more available data on land use and Yosemite toad occurrence. In 2005, the USFS began a long-term study to assess the effects of grazing on Yosemite toads (Allen Diaz *et al.* 2010, pp. 1–45). The researchers assessed: (1) Whether livestock grazing under SNFPA Riparian Standards and Guidelines has a measurable effect on Yosemite toad populations and (2) effects of livestock grazing intensity on key habitat components that affect survival and recruitment of Yosemite toad populations. SNFPA standards and guidelines limit livestock utilization of grass and grass-like plants to a maximum of 40 percent (or a minimum 4-inch stubble height) (USDA 2004, p. 56). This study did not detect an effect from grazing activity on young-of-year toad density or breeding pool occupancy, water quality, or cover (when grazing under SNFPA Riparian Standards and Guidelines) (Allen Diaz *et al.* 2010, p. 1).

However, the design of these studies did not include direct measurements of toad survival (for example, mark-recapture analysis of population trends), and the design was limited in numbers of years and treatment replicates. It is plausible that for longer-lived species with irregular female breeding activity over the time course of this particular study, statistical power was not sufficient to discern a treatment effect. Further, there may be a time lag between effect and discernible impacts, and significant confounding variability in known drivers such as interannual variation in climate.

Additionally, the experimental design in the Allen Diaz study tested the hypothesis that forest management guidelines (at 40 percent use threshold) were impacting toad populations, and this limited some analyses and experimental design to sites with lower treatment intensities. Researchers reported annual utilization by cattle ranging from 10–48 percent, while individual meadow use ranged from 0–76 percent (the SNFPA allowable use is capped at 40 percent) (Allen Diaz *et al.* 2010, p. 5). As a result of the study design, the Allen Diaz study does not provide sufficient information on the impacts of grazing on Yosemite toads above the prescribed management guidelines. It is also not clear to what extent brief episodes of intense use (such as in cattle gathering areas) have as negative impacts on toads, or over what percentage of the grazed meadow landscape such heavier usage may occur.

The researchers observed significant variation in young-of-year occupancy in pools between meadows and years, and within meadows over years (Allen Diaz *et al.* 2010, p. 7). This variability would likely mask treatment effects, unless the grazing variable was a dominant factor driving site occupancy, and the magnitude of the effect was quite severe. Further, Lind *et al.* (2011, pp. 12–14) report statistically significant negative (inverse) relationships for tadpole density and grazing intensity (tadpole densities decreased when percent use exceeded between 30 and 40 percent). This result supports the hypothesis that grazing at intensities approaching and above the 40 percent threshold can negatively affect Yosemite toad populations.

Allen Diaz *et al.* (2010, p. 2) found that toad occupancy is strongly driven by meadow wetness (hydrology) and suggested attention should focus on contemporary factors directly impacting meadow wetness, such as climate, fire regime changes, and conifer encroachment (see Factor A above). Lind *et al.* (2011, pp. 12–14) noted a positive relationship between meadow dryness and livestock use (cattle prefer drier meadows), and also found that the proportion of Yosemite toad-occupied pools and tadpole and young-of-year densities declined in drier sites (toads prefer wetter meadows). The researchers suggest that this provides for some segregation of toad and livestock use in meadow habitats, so that at least direct mortality threats may be mitigated by behavioral isolation.

The available grazing studies focus on breeding habitat (wet meadows) and do not consider impacts to upland habitats. The USFS grazing guidelines for protection of meadow habitats of the Yosemite toad include fencing breeding meadows, but they do not necessarily protect upland habitat. Grazing removes vegetative cover, and surveys have shown reductions in the number of Yosemite toads in an area after the herbaceous cover was grazed (Martin 2008, p. 298). Grazing can also degrade or destroy moist upland areas used as nonbreeding habitat by Yosemite toads (Martin 2008, pp. 159), especially when nearby meadow and riparian areas have been fenced to exclude livestock. Livestock may also collapse rodent burrows used by Yosemite toads as cover and hibernation sites (Martin 2008, p. 159) or disturb toads and

disrupt their behavior. Martin (2008, pp. 305–306) observed that grazing significantly reduced vegetation height, and since these areas are not protected by current grazing guidelines, deduced that cattle grazing is having a negative effect on terrestrial life stage survivorship in Yosemite toads. This problem was exacerbated as fenced areas effectively shifted grazing activity to upland areas actively used by terrestrial life stages of the Yosemite toad (Martin 2008, p. 306). Based on the limitations of the study as described above, we find the initial results from Allen Diaz *et al.* (2010, pp. 1–45) to be inconclusive to discern the impacts of grazing on Yosemite toad populations rangewide.

Although we lack definitive data to assess the link between Yosemite toad population dynamics and habitat degradation by livestock grazing activity (see Factor E below), in light of the documented impacts to meadow habitats (including effects on local hydrology) from grazing activity in general, we consider this threat prevalent with moderate impacts to the Yosemite toad and a potential limiting factor in population recovery rangewide. In addition, given the potential for negative impacts from heavy use, and the vulnerability of toad habitat should grazing management practices change with new management plans, we expect this threat to continue into the future.

Roads and Timber Harvest Effects to Meadow Habitat

Road construction and use, along with timber harvest activity, may impact Yosemite toad habitat via fragmentation, ground disturbance, and soil compaction or erosion (Helms and Tappeiner 1996, pp. 439–476). These activities, similar to overgrazing, may lead to increased rates of siltation and succession of wet meadows, contributing to the loss of breeding habitats for the Yosemite toad.

Prior to the formation of National Parks and National Forests, timber harvest was widespread and unregulated in the Sierra Nevada; however, most cutting occurred below the current elevation range of the Yosemite toad (University of California at Davis (UCD) UC 1996b, pp. 17–45). Between 1900 and 1950, most timber harvest occurred in old growth forests on private land (UC 1996b, pp. 17–45). The majority of roads in National Forests of the Sierra Nevada were built between 1950 and 1990, to support major increases in timber harvest on National Forests and also at higher elevations (USDA 2001a, p. 445).

It is plausible to hypothesize that the majority of timber harvest, road development, and associated management impacts (see "Fire Management Regime Effects to Meadow Habitats" below) to Yosemite toads would have taken place during this expansion period in the latter half of the 20th century. However, the magnitude (and perhaps even whether it is positive or negative) of this effect would likely be a function of site-specific parameters, and the level of intensity of each particular land use. In contrast to overharvest, it is also possible that moderate harvest activity adjacent to meadow habitats could benefit meadows and upland habitat by discouraging encroachment and opening the forest canopy (Liang *et al.* 2010, p. 16). Despite this possibility, there is no evidence that the current level of timber harvest occurring within watersheds currently inhabited by the Yosemite toad is adversely affecting habitat. Therefore the best available scientific and commercial information does not indicate whether ongoing road construction and maintenance or timber harvest are significant threats to the Yosemite toad.

Fire Management Regime Effects to Meadow Habitats

Fire management refers to activities over the past century to combat forest fires. Historically, it is known that American Indians regularly burned the mountains (Parsons and Botti 1996, p. 29), and in the latter 19th century, the active use of fire to eliminate tree canopy in favor of forage plants continued by sheepherders (Kilgore and Taylor 1979, p. 139). Beginning in the 20th century, land management in the Sierra Nevada shifted to focus on fire suppression as a guiding policy (UC 2007, p. 10).

Long-term fire suppression has influenced forest structure and altered ecosystem dynamics in the Sierra Nevada. In general, the time between fires is now much longer than it was historically, and live and dead fuels are more abundant and continuous (USDA 2001a, p. 35). It is not clear how this has precisely affected Yosemite toad populations; however Liang *et al.* (2010, p. 16) observed that toads were less likely to occur in areas where the fire regime was significantly altered from historical conditions, and suggested that the toads are affected by some unknown or unmeasured factors related to fire management.

Evidence indicates that fire plays a significant role in the evolution and maintenance of meadows of the Sierra Nevada. Under natural conditions, conifers are excluded from meadows by fire and saturated soils. Small fires thin and/or destroy encroaching conifers, while large fires are believed to determine the meadow-forest boundary (Vankat and Major 1978, p. 394; Parsons and DeBenedetti 1979, pp. 29–31). Fire is thought to be important in maintaining open aquatic and riparian habitats for amphibians in some systems (Russel *et al.* 1999, pp. 374–384), and fire suppression may have thereby contributed to conifer encroachment on meadows (Chang 1996, pp. 1071–1099; NPS 2002, p. 1).

While no definitive studies have confirmed a link between fire management and rangewide population decline of the Yosemite toad, circumstantial evidence to date suggests that historic fire suppression has been a factor underlying meadow encroachment that has reduced the suitability of these areas to sustain the life history of the Yosemite toad. Given this link and based on the best available information, we find it likely that habitat modification due to reduced fire frequency is an extant threat to Yosemite toad habitat, acting with moderate prevalence.

Recreation Effects to Meadow Habitat

Recreational activities take place throughout the Sierra Nevada, and they can have significant negative impacts on wildlife and their habitats (USDA 2001a, pp. 221, 453–500). Recreation can cause considerable impact to western U.S. Wilderness Areas and National Parks even with light use, with recovery only occurring after considerable periods of non-use (USFS *et al.* 2009, p. 66). Heavy foot traffic in riparian areas tramples vegetation, compacts soils, and can physically damage streambanks. Trails (foot, horse, bicycle, or off-highway motor vehicle) compact the soil, displace vegetation, and increase erosion, thereby potentially lowering the water table (Kondolph *et al.* 1996, pp. 1009–1026).

Packstock use has similar effects to those discussed for livestock grazing, although this risk factor is potentially more problematic as this land use typically takes place in more remote and higher elevation areas occupied by Yosemite toads, and packstock tend to graze in many of the same locations that the toads prefer (USFS *et al.* 2009, p. 65). Currently, there are very few studies on the effects of packstock grazing on amphibians, especially in the Sierra Nevada. It is not clear how well studies on livestock grazing can be extrapolated to packstock, and even then, shorter-term experiments may not show effects if landscapes have already

been pushed beyond a threshold of effect (Brooks 2012, pers. comm.). However, current guidelines in the National Parks limit trips to 20–25 animals, regulated under conditional use permits (Brooks 2012, pers. comm.). In general, National Parks and commercial users are reducing their usage, so packstock impacts, if they occur, are declining within the National Parks (Berlow 2012, pers. comm.).

The effects of recreational activities on the Yosemite toad are not quantified, but they may have impacts in certain areas and under certain conditions. For example, where foot traffic or vehicle activity adjacent to occupied meadows is more prevalent, erosion and channel incision could result. The cumulative impact to the species from localized threats associated with recreational impacts is not possible to quantify, but we do know that recreation is the fastest growing use of National Forests (USDA 2001a, pp. 453–500). The relative sensitivity of high-elevation sites to recreational use makes them vulnerable to disturbance, and the significance of this impact is expected to increase into the future as recreational use continues to increase. Nevertheless, collectively at this time, we consider recreational activities to be a low prevalence threat across the range of the Yosemite toad.

Dams and Water Diversions Effects to Meadow Habitat

Diversion and irrigation ditches form a vast network that altered local and regional stream hydrology in the Sierra Nevada (SNEP 1996, p. 120). Several artificial lakes are located in or above Yosemite toad habitat, most notably Edison, Florence, Huntington, Courtright, and Wishon Reservoirs. By altering the timing and magnitude of water flows, these reservoirs have caused changes in hydrology that may have altered Yosemite toad habitat. Changes in water flows have increased water levels upstream of the reservoirs, which may have reduced the suitability of shallow water habitats necessary for egg laying and allowed fish competitors into those habitats. Moreover, water level declines caused by drawdown of reservoirs can lead to the mortality of eggs and tadpoles by stranding and desiccation.

The artificial lakes (reservoirs) mentioned above were probably created within, and inundated, Yosemite toad habitat, and most native Sierra Nevada amphibians cannot live in or move through reservoirs (Jennings 1996, pp. 921–944). Therefore, reservoirs represent both a loss of habitat and a barrier to dispersal and gene flow. These factors have likely contributed to the decline of the Yosemite toad and continue to pose a risk to the species. Impacts due to increasing effects from climate change, or new water supply development in response to such effects, may exacerbate this risk in the future. The contribution of reservoir construction and operation to population losses was likely of high historical significance in these developed areas, but less so in the current extent of the Yosemite toad's (remnant) range. Therefore, currently, we consider this threat to be of low prevalence to the Yosemite toad across its range.

Climate Effects to Meadow Habitat

Different studies indicate that multiple drivers are behind the phenomenon of conifer encroachment on meadows. The first factor affecting the rate of conifer encroachment on meadow habitats, fire suppression, was discussed above. Climate variability is another factor affecting the rate of conifer encroachment on meadow habitats. A study by Franklin *et al.* (1971, p. 215) concluded that fire had little influence on meadow maintenance of their study area, while another study concluded that climate change is a more likely explanation for encroachment of trees into the adjacent meadow at their site, rather than fire suppression or changes in grazing intensity (Dyer and Moffett, 1999, pp. 444).

Climatic variability is strongly correlated with encroachment of dry subalpine meadows (Jakubos and Romme 1993, p. 382). In the Sierra Nevada, most lodgepole pine seedlings become established during years of low snowpack when soil meadow moisture is reduced (Wood 1975, p. 129). The length of the snow-free period may be the most critical variable in tree invasion of subalpine meadows (Franklin *et al.* 1971, pp. 222), with the establishment of a good seed crop, followed by an early snowmelt, resulting in significant tree establishment. It is apparent that periods of low snowpack and early melt may in fact be necessary for seedling establishment (Ratliff, 1985, p. 35). Millar *et al.* (2004, p. 181) reported that increased temperature, coupled with reduced moisture availability in relation to large-scale temporal shifts in climate, facilitated the invasion of 10 subapline meadows studied in the Sierra Nevada.

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). "Climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (for example, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (for example, habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

For the Sierra Nevada ecoregion, climate models predict that mean annual temperatures will increase by 1.8 to 2.4 °C (3.2 to 4.3 °F) by 2070, including warmer winters with earlier spring snowmelt and higher summer temperatures (PRBO 2011, p. 18). Additionally, mean annual rainfall is projected to decrease from the current average by some 9.2–33.9 cm (3.6–13.3 in) by 2070 (PRBO 2011, p. 18). However, projections have high uncertainty and one study predicts the opposite effect (PRBO 2011, p. 18). Snowpack is, by all projections, going to decrease dramatically (following the temperature rise and increase in precipitation falling as rain) (PRBO 2011, p. 19). Higher winter streamflows, earlier runoff, and reduced spring and summer streamflows are projected, with increasing severity in the southern Sierra Nevada (PRBO 2011, pp. 20–22).

Snow-dominated elevations from 2,000–2,800 m (6,560–9,190 ft) will be the most sensitive to temperature increases (PRBO 2011, p. 23). Meadows fed by snowmelt may dry out or be more ephemeral during the non-winter months (PRBO 2011, p. 24). This pattern could influence ground water transport, and springs may be similarly depleted, leading to lower water levels in available breeding habitat and decreased area of suitable habitat for rearing tadpoles of Yosemite toads.

Historically, drought has contributed to the decline of the Yosemite toad (Kagarise Sherman and Morton 1993, p. 186; Jennings and Hayes 1994, pp. 50–53). Climate change itself may also have contributed to that decline if greenhouse

gas emissions have contributed to the intensity of droughts and severity of occasional extreme cold winters during the last several decades. Extended and more severe droughts pose an ongoing, rangewide risk to the species. Less water, specifically less water as snow, means less and lower quality habitat for Yosemite toads. However, it is difficult to discern the effects of climate change on Yosemite toad populations without focused, long-term study.

Davidson *et al.* (2002, p. 1598) analyzed geographic decline patterns in Yosemite toad. They compared known areas of extirpation against a hypothesized model for climate change that would predict greater numbers of extirpations at lower altitudes, and in more southern latitudes. The researchers did not observe a pattern in the available historic data to support the climate change hypothesis as a driver of historic population losses, although they acknowledge that climate change may be a contributor in more complex or subtle ways. Additionally, this study was limited by small sample size, and it is possible that climate change effects on the Yosemite toad (a long-lived species) may not become evident for many years (USFS *et al.* 2009, p. 48). Finally, Davidson *et al.* (2002, p. 1598) did find an increase in occupancy with elevation (greater densities of populations at altitude), and it is suggested that this observation is consistent with a pattern that would fit a response to climate change (USFS *et al.* 2009, p. 48). However, this observation would also be consistent if the features of these particular habitats (such as at higher elevation) were more suited to the special ecological requirements of the toad, or if other stressors acting on populations at lower elevations were responsible for the declines. We therefore find these results inconclusive.

The breeding ecology and life history of the Yosemite toad are that of a habitat specialist, as it utilizes pool and meadow habitats during the onset of snowmelt and carefully times its reproduction to fit available conditions within ephemeral breeding sites. The most striking documented declines in Yosemite toad populations in the historical record are correlated with extreme climate episodes (drought) (Kagarise Sherman and Morton 1993, pp. 186–198). Given these observations, it is likely that climate change (see also discussion in mountain yellow-legged frog's Summary of Factors Affecting the Species, under Factor E) poses a significant risk to the Yosemite toad now and in the future. It is quite possible that these impacts are occurring currently, and have occurred over the last few decades. However, it is difficult in short time intervals to discern the degree of effect from climate change within the variability of natural climate cycles.

In summary, based on the best available scientific and commercial information, we consider the threats of destruction, modification, and curtailment of the species' habitat and range to be significant ongoing threats to the Yosemite toad. The legacy effects of past land uses have altered meadow communities through the mechanism of stream incision by permanently reducing habitat quantity and quality unless active and costly restoration is implemented. Climate change is a current threat of high magnitude. Threats considered of moderate magnitude include livestock grazing and fire management regime. Threats considered currently low magnitude include roads and timber harvest, dams and water diversions, and recreational land uses.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We do not have any scientific or commercial information to indicate that overutilization for commercial, recreational, or scientific purposes poses a threat to the Yosemite toad. There is no known commercial market for Yosemite toads, and there is also no documented recreational or educational use for Yosemite toads.

Scientific research may cause some stress to Yosemite toads through disturbance and disruption of behavior, handling, and injuries associated with marking individuals. This activity has resulted in the known death of a few individuals through accidental trampling (Green and Kagarise Sherman 2001, pp. 92–103), irradiation from radioactive tags (Karlstrom 1957, pp. 187–195), and collection for museum specimens (Jennings and Hayes 1994, pp. 50–53). However, there is currently relatively little research effort on this species, and scientists as a general rule take actions to mitigate harm to their study species. Therefore, scientific research is not a threat to the Yosemite toad. It is anticipated that further research into the genetics and life history of the Yosemite toad and broader methodological censuses will provide a net conservation benefit to this under-studied species.

Based on the best available scientific and commercial information, we do not consider the overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the Yosemite toad.

Factor C. Disease or Predation

Predation

Prior to the trout stocking of high Sierra Nevada lakes, which began over a century ago, fish were entirely absent from most of this region (Bradford 1989, pp. 775–778). Observations regarding the effects of introduced fishes on the Yosemite toad are mixed. However, re-surveys of historical Yosemite toad sites have shown that the species has disappeared from several lakes where they formerly bred, and these areas are now occupied by fish (Stebbins and Cohen 1995, pp. 213–215; Martin 2002, p. 1).

Drost and Fellers (1994, pp. 414–425) suggested that Yosemite toads are less vulnerable to fish predation than frogs because they breed primarily in ephemeral waters that do not support fish. Further, Jennings and Hayes (1994, pp. 50–53) stated that the palatability of Yosemite toad tadpoles to fish predators is unknown, but often assumed to be low based on the unpalatability of western toads (Drost and Fellers 1994, pp. 414–425; Kiesecker *et al.* 1996, pp. 1237–1245), to which Yosemite toads are closely related. Grasso (2005, p. 1) observed brook trout swimming near, but the trout ignored Yosemite toad tadpoles, suggesting that tadpoles are unpalatable. The study also found that subadult Yosemite toads were not consumed by brook trout (Grasso 2005, p. 1), although the sublethal effects of trout "sampling" (mouthing and ejecting tadpoles) and the palatability of subadults to other trout species are unknown. Martin (2002, p. 1) observed brook trout preying on Yosemite toad tadpoles, and also saw them "pick at" Yosemite toad eggs (which later became infected with fungus). In addition, metamorph western toads have been observed in golden trout stomach contents (Knapp 2002c, p. 1). Nevertheless, Grasso *et al.* (2010, p. 457) concluded that early life stages of the Yosemite toad likely possess chemical defenses that provide sufficient protection from native trout predation.

The observed predation of Yosemite toad tadpoles by trout (Martin 1992, p.1) indicates that introduced fishes may pose a predation risk to the species in some situations, which may be accentuated during drought years. At a site where Yosemite toads normally breed in small meadow ponds, they have been observed to successfully switch breeding activities to stream habitat containing fish during years of low water (Strand 2002, p. 1). Thus,

drought conditions may increase the toads' exposure to predatory fish, and place them in habitats where they compete with fish for invertebrate prey. Additionally, although the number of lake breeding sites used by Yosemite toads is small relative to the number of ephemeral sites, lake sites may be especially important because they are more likely to be habitable during years with low water (Knapp 2002c, p. 1).

Overall, the data and available literature suggest that direct mortality from fish predation is likely not an important factor driving Yosemite toad population dynamics. This does not discount other indirect impacts, such as the possibility that fish may be effective disease vectors (see below). Yosemite toad use of more ephemeral breeding habitats (which are less habitable to fish species as they cannot tolerate drying or freezing) minimizes the interaction of fish and toad tadpoles. Further, where fish and toads co-occur, it is possible that food depletion (outcompetition) by fish negatively affects Yosemite toads (USFS *et al.* 2009, p. 58).

Other predators may also have an effect on Yosemite toad populations. Kagarise Sherman and Morton (1993, p. 194) reported evidence of toad predation by common ravens (*Corvus corax*) and concluded this was the responsible factor in the elimination of toads from one site. These researchers also confirmed, as reported in other studies, predation on Yosemite toad by Clark's nutcrackers (*Nucifraga columbiana*). The significance of avian predation may increase if the abundance of common ravens within the current range of the Yosemite toad increases as it has in nearby regions (Camp *et al.* 1993, p. 138; Boarman *et al.* 1995, p. 1; Kelly *et al.* 2002, p. 202). However, the degree to which avian predation may be affecting Yosemite toad populations has not been quantified.

Disease

Although not all vectors have been confirmed in the Sierra Nevada, introduced fishes, humans, pets, livestock, packstock, vehicles, and wild animals may all act to facilitate disease transmission between amphibian populations. Infection of both fish and amphibians by a common disease has been documented with viral (Mao *et al.* 1999, pp. 45–52) and fungal pathogens in the western United States (Blaustein *et al.* 1994b, pp. 251–254). Mass die-offs of amphibians in the western United States and around the world have been attributed to Bd fungal infections of metamorphs and adults (Carey *et al.* 1999, pp. 1–14), *Saprolegnia* fungal infections of eggs (Blaustein *et al.* 1994b, pp. 251–254), ranavirus infections, and bacterial infections (Carey *et al.* 1999, pp. 1–14).

Various diseases are confirmed to be lethal to Yosemite toads (Green and Kagarise Sherman 2001, pp. 92–103), and recent research has elucidated the potential role of Bd infection as a threat to Yosemite toad populations (Dodge and Vredenburg 2012, p.1). These various diseases and infections, in concert with other factors, have likely contributed to the decline of the Yosemite toad (Kagarise Sherman and Morton 1993, pp. 193–194), and may continue to pose a risk to the species (Dodge and Vredenburg 2012, p. 1).

Die-offs in Yosemite toad populations have been documented in the literature, and an interaction with diseases in these events has been confirmed. However, no single cause has been validated by field studies. Tissue samples from dead or dying adult Yosemite toads and healthy tadpoles were collected during a die-off at Tioga Pass Meadow and Saddlebag Lake and analyzed for disease (Green and Kagarise Sherman 2001, pp. 92–103). Six infections were found in the adults, including infection with Bd, bacillary bacterial septicemia (red-leg disease), *Dermosporidium* (a fungus), myxozoa spp. (parasitic cnidarians), *Rhabdias* spp. (parasitic roundworms), and several species of trematode (parasitic flatworms). Despite positive detections, no single infectious disease was found in more than 25 percent of individuals, and some dead toads showed no signs of infection to explain their death. Further, no evidence of infection was found in tadpoles. A meta-analysis of red-leg disease also revealed that the disease is a secondary infection that may be associated with a suite of different pathogens, and so actual causes of decline in these instances were ambiguous (Kagarise Sherman and Morton 1993, p. 194). The authors concluded that the die-off was caused by suppression of the immune system caused by an undiagnosed viral infection or chemical contamination that made the toads susceptible to the variety of diagnosed infections.

Saprolegnia ferax, a species of water mold that commonly infects fish in hatcheries, caused a massive lethal infection of eggs of western toads at a site in Oregon (Blaustein *et al.* 1994b, pp. 252). It is unclear whether this event was caused by the introduction of the fungal pathogen via fish stocking, or if the fungus was already present and the eggs' ability to resist infection was inhibited by some unknown environmental factor (Blaustein *et al.* 1994b, pp. 253). Subsequent laboratory experiments have shown that the fungus could be passed from hatchery fish to western toads (Kiesecker *et al.* 2001, pp. 1064–1070). Fungal growth on Yosemite toad eggs has been observed in the field, but the fungus was not identified and it was unclear whether the fungus was the source of the egg mortality (Kagarise Sherman 1980, p. 46). Field studies conducted in Yosemite National Park found that an undetermined species of water mold infected only the egg masses that contained dead embryos of Yosemite toads (Sadinski 2004, pp. 33–34). The researchers also observed that the water mold became established on egg masses only after embryo death, and subsequently spread, causing the mortality of additional embryos of Yosemite toads.

Sadinski (2004, p. 35) discovered that mortality of Yosemite toad embryos may be attributed to an unidentified species of a free-living flatworm (*Turbellaria* spp.). In Yosemite National Park, these worms were observed to penetrate Yosemite toad egg masses and feed directly on the embryos. In some locations, *Turbellaria* spp. reached such large densities that they consumed all the embryos within a Yosemite toad egg mass. Predation also facilitated the colonization and spread of water mold on egg masses, leading to further embryo mortality. Further studies would be needed to determine which species of *Turbellaria* feeds on Yosemite toad eggs, and the extent of this impact on Yosemite toad populations.

Until recently, the contribution of Bd infection to Yosemite toad population declines was relatively unknown. Although the toad is hypothetically susceptible due to co-occurrence with the mountain yellow-legged frog, it is suspected that the spread and growth of Bd in the warmer pool habitats, occupied for a much shorter time relative to the frog, renders individuals less prone to epidemic outbreaks (USFS *et al.* 2009, p. 50). Fellers *et al.* (2011, p. 391) documented the occurrence of Bd infection in Yosemite National Park toads over at least a couple of decades, and they note population persistence in spite of the continued presence of the pathogen. In a survey of 196 museum specimens, Dodge and Vredenburg (2012, p. 1) report the first presence of Bd infection in Yosemite toads beginning in 1961, with the pathogen becoming highly prevalent during the recorded declines of the late 1970s, before it peaked in the 1990s at 85 percent positive incidence. In live specimen sampling, Dodge and Vredenburg (2012, p. 1) collected 1,266 swabs of Yosemite toads between 2006 and 2011, and found Bd infection

intensities at 17–26 percent (with juvenile toads most affected). The results from these studies support the hypothesis that Bd infection and chytridiomycosis have played an important role in Yosemite toad population dynamics over the period of their recent recorded decline.

Carey (1993, pp. 355–361) developed a model to explain the disappearance of boreal toads (*Bufo boreas boreas*) in the Rocky Mountains, suggesting immune system suppression from extreme winter stress ("winter stress syndrome") could have contributed to the decline in that species. This model may also fit Yosemite toad die-offs observed by Kagarise Sherman and Morton (1993, pp. 186–198), given the close relationship between the two toads, and their occupation of similar habitats. However, an analysis of immune system suppression and the potential role of winter stress relative to Yosemite toad population trends is not available at this time. Yet, the decline pattern observed in the Carey study is mirrored by the pattern in the Yosemite toad (heavy mortality exhibited in males first) (Knapp 2012, pers. comm.). This observation, in concert with the recent results from museum swabs (Dodge and Vredenburg 2012, p. 1), provides a correlative link to the timing of the recorded Yosemite toad declines and Bd infection intensities.

Although disease as a threat factor to the Yosemite toad is relatively less documented, there is evidence for Bd infection related to historical die-offs in Yosemite toads. Much of the historic research documenting Yosemite toad declines predated our awareness of Bd as a major amphibian pathogen. Additionally, the life history of the Yosemite toad, as a rapid breeder during early snowmelt, limits the opportunities to observe population crashes in the context of varied environmental stressors. Currently available evidence indicates that Bd was likely a significant factor contributing to the recent historical declines observed in Yosemite toad populations (Dodge and Vredenburg 2012, p. 1). Although infection intensities are currently lower than some peak historic measurements, this threat remains a potential factor to date that may continue to reduce survival through metamorphosis, and therefore recruitment to the breeding population (Knapp 2012, pers. comm.). Additionally, the interaction of disease and other stressors, such as climate extremes, is not well understood in the Yosemite toad. Research does suggest that the combination of these threats represents a factor in the historical decline of the species (Kagarise Sherman and Morton 1993, p. 186).

In summary, based on the best available scientific and commercial information, we consider disease to be a threat to the Yosemite toad that has a moderate, ongoing effect on populations of the species rangewide. The threat most specifically includes the amphibian pathogen, Bd. Based on the best available scientific and commercial information, we are uncertain about the impacts of avian predation on Yosemite toads at this time, and therefore do not consider it to be a listing factor. Although definitive empirical data quantifying the contribution of disease to Yosemite toad population declines are not currently available, the concurrence of population declines with the prevalence and spread of Bd across the Sierra Nevada support the assertion that disease has played a role in the observed trend. Further, Bd infection, even at lower intensities, may interact with climate extremes and continue to depress recruitment of yearling and subadult Yosemite toads to breeding Yosemite toad populations. We suspect this threat was historically significant, that it is currently having a moderate influence on toad populations, and we expect it to be a future concern.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In determining whether the inadequacy of regulatory mechanisms constitutes a threat to the Yosemite toad, we analyzed the existing Federal and State laws and regulations that may address the threats to the species or contain relevant protective measures. Regulatory mechanisms are typically nondiscretionary and enforceable, and may preclude the need for listing if such mechanisms are judged to adequately address the threat(s) to the species such that listing is not warranted. Conversely, threats on the landscape are not addressed by existing regulatory mechanisms where the existing mechanisms are not adequate (or not adequately implemented or enforced).

We discussed the applicable State and Federal laws and regulations, including the Wilderness Act, NFMA above (see Factor D discussion for mountain yellow-legged frog complex). In general, the same administrative policies and statutes are in effect for the Yosemite toad. This section additionally addresses regulatory mechanisms with a specific emphasis on the Yosemite toad.

Taylor Grazing Act of 1934

In response to overgrazing of available rangelands by livestock from the 1800s to the 1930s, Congress passed the Taylor Grazing Act in 1934 (43 U.S.C. 315 *et seq.*). This action was an effort to stop the damage to the remaining public lands as a result of overgrazing and soil depletion, to provide coordination for grazing on public lands, and to attempt to stabilize the livestock industry (Meehan and Platts 1978, p. 275; *Public Lands Council et al.* v. *Babbitt Secretary of the Interior et al.* (167 F. 3d 1287)). Although passage of the Taylor Grazing Act resulted in reduced grazing in some areas, it did not reduce grazing severity, and localized use remained high, precluding regeneration of many meadow areas (Beesley 1996, p. 14; Menke *et al.* 1996, p. 14; *Public Lands Council et al.* v. *Babbitt Secretary of the Interior et al.* (167 F. 3d 1287)).

Existing Federal and State laws and regulatory mechanisms currently offer some level of protection for the Yosemite toad. Specifically, these include the Wilderness Act, the NFMA, the SNFPA, and the FPA (see Factor D discussion for mountain yellow-legged frog complex). Based on the best available scientific and commercial information, we do not consider the inadequacy of existing regulatory mechanisms to be a threat to the Yosemite toad.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Yosemite toad is sensitive to environmental change or degradation due to its life history, biology, and existence in ephemeral habitats characterized by climate extremes and low productivity. It is also sensitive to anthropogenically influenced factors. For example, contaminants, acid precipitation, ambient ultraviolet radiation, and climate change have been implicated as contributing to amphibian declines (Corn 1994, pp. 62–63; Alford and Richards 1999, pp. 2–7). These factors are discussed in the context of the mountain yellow-legged frog above (see Factor E discussion for mountain yellow-legged frog complex), and are largely applicable to the Yosemite toad. The following discussion will focus on potential threat factors specifically studied in the Yosemite toad, or areas where the prevalence of the threat may differ based on the unique life history, population status, demographics, or biological factors specific to Yosemite toad populations.

Contaminants

The Yosemite toad is likely exposed to a variety of pesticides and other chemicals throughout its range. This includes those imported via aerial drift and precipitation (see "Contaminants"

discussion for mountain yellow-legged frog complex). But, given their life history that includes significant time in upland habitats, there are also locally applied pesticides that may have more of an impact on the terrestrial life stages of Yosemite toads. In order of their application rate, the most commonly used locally applied pesticides for forest resource management are: glyphosate, triclopyr, clopyralid, hexazinone, aminopyralid, chlorsulfuron, imazapyr, and aluminum phosphide (applied to rodent burrows) (USFS *et al.* 2009, p. 63).

Large amounts of ammonia-based fire retardants and surfactant-based fire-suppressant foams, including ammonium phosphate, ammonium sulfate, and sodium ferrocyanide, are applied to areas managed by the USFS (National Forests and Wilderness Areas) that may be inhabited by Yosemite toads when wildfires occur within their range (USFS *et al.* 2009, p. 54). Fire retardant chemicals contain nitrogen compounds and surfactants. Applied surfactants and dyes include: R–11, Hasten, Syltac, highlight blue, bas-oil red, and colorfast purple (USFS *et al.* 2009, p. 63). Laboratory tests of these chemicals have shown that they cause mortality in fish and aquatic invertebrates (Hamilton *et al.* 1996, pp. 132–144); similar effects are possible in amphibians. Calfee and Little (2003, pp. 1529–1530) report that southern leopard frogs (*Rana sphenocephala*) and boreal toads (*Bufo boreas*) are more tolerant than rainbow trout (*Oncorhynchus mykiss*) to fire retardant chemicals. However, the acute toxicity of some compounds is enhanced by ultraviolet light, which may harm amphibians at environmentally relevant concentrations. Therefore, if fire retardant chemicals are dropped in or near Yosemite toad habitat, they may have negative effects on individual toads. Yosemite toad populations span wilderness areas and sparsely vegetated, high-elevation habitats. As fire is infrequent in these areas, fire retardant chemicals are likely not a threat through much of the species' range (USFS *et al.* 2009, p. 55).

The risk to Yosemite toad from locally applied pesticides, surfactants, and dyes is not known. However, most of the use of these chemicals also largely occurs below the current elevational range of the toad, so this risk factor is likewise limited in scale.

The effect of contamination from other environmental pollutants is not well-studied. Preliminary research indicates that Yosemite toad tadpoles in grazed areas take longer to metamorphose and produce smaller metamorphs than those in areas being rested from grazing, potentially due to high bacterial and nutrient levels in the grazed areas (Martin 2002, pp. 1–3; Martin 2008, p. 157). Finally, water quality may be affected by the introduction of chemicals and wastes from camp use (USFS *et al.* 2009, p. 58), which would logically have greater influence on the more aquatic life stages. However, given the early season breeding for this species, the coincidence of recreational use wastes and tadpoles is likely relatively minor.

Acid precipitation has been hypothesized as a cause of amphibian declines (including toads) in the Sierra Nevada because waters there are extremely low in acid-neutralizing capacity, and therefore susceptible to changes in water chemistry due to acidic deposition (Bradford *et al.* 1994b, pp. 155–161). In addition to raising the acidity of water bodies, acid deposition may also cause increases in dissolved aluminum (from soils), which may be toxic to amphibians (Bradford *et al.* 1992, 271–275). In laboratory experiments (Bradford *et al.* 1992, pp. 369–377; Bradford and Gordon 1992, pp. 75–76), high acidity and high aluminum concentrations did not have significant effects on survival of Yosemite toad embryos or newly hatched tadpoles. However, at pH 5.0 and at high aluminum concentrations, Yosemite toad embryos hatched earlier and the tadpoles showed a reduction in body size.

In a complementary field study of 235 amphibian breeding sites, Bradford *et al.* (1994, pp. 155–161) concluded that acid precipitation is an unlikely cause of decline in Yosemite toad populations. However, researchers suggest this risk factor should still be considered in conservation efforts because of the possibility of sublethal effects, of its interaction with other factors, and of the potential for more severe acid deposition in the future (Bradford *et al.* 1992, p. 375; USFS *et al.* 2009, p. 44). Overall, we consider acid deposition a low risk to the species at this time, and likely not a significant threat into the future (see discussion under Factor E for mountain yellow-legged frogs above).

In summary, a number of studies have investigated the potential threats of a number of contaminants, such as pesticides, fire retardants, and acid precipitation. Based on the best available commercial and scientific information, we do not believe that contaminants pose a significant threat to populations of the Yosemite toad.

Ultraviolet Radiation

Ambient UV–B radiation has increased at north temperate latitudes in the past 2 decades (Adams *et al.* 2001, pp. 519–525). Ambient levels of UV–B were demonstrated to cause significant decreases in survival of western toad eggs in field experiments (Blaustein 1994, pp. 32–39). In a laboratory experiment (Kats *et al.* 2000, pp. 921–931), western toad metamorphs exposed to levels of UV–B below those found in ambient sunlight showed a lower alarm response to chemical cues of injured toads than metamorphs that were completely shielded from UV–B. This indicates that ambient levels of UV–B may cause sublethal effects on toad behavior that could increase their vulnerability to predation. In a field experiment (Kiesecker and Blaustein 1995, pp. 11049–11052), the combined effects of exposure to ambient levels of UV–B radiation and exposure to a pathogenic fungus (*Saprolegnia*) were shown to cause significantly higher mortality of western toad embryos than either factor alone.

Sadinski *et al.* (1997, pp. 1–8) observed a high percentage of embryo mortality in Yosemite toads at six breeding sites in Yosemite National Park, but in a subsequent field experiment this mortality did not appear to be related to UV–B (Sadinski 2004, p. 37). In spatial analyses of extant and extinct populations, higher elevation was positively correlated with extant Yosemite toad populations. This is counter to what would be expected if UV–B were the primary cause of decline (Davidson 2002, p. 15), as sites at higher elevations would be expected to receive more solar radiation due to the thinner atmosphere. UV–B at high elevations in the Sierra Nevada has increased less than 5 percent in the past several decades (Jennings 1996, pp. 921–944). These data further indicate that UV–B has likely not contributed significantly to the decline of Yosemite toads. Based on the best available commercial and scientific information, this threat factor is currently considered a low risk to the species.

Climate Change Effects on Individuals

As discussed above in Factor A, climate change can result in detrimental impacts to Yosemite toad habitat. Climate variability could also negatively impact populations through alteration of the frequency, duration, and magnitude of either droughts or severe winters (USFS *et al.* 2009, p. 47). Yosemite toads breed and their tadpoles develop in shallow meadow and ephemeral habitats, where mortality from

desiccation and freezing can be very high, often causing complete loss of an annual cohort (USFS *et al.* 2009, p. 10). Kagarise Sherman and Morton (1993, pp. 192–193) documented in a long-term population study that Yosemite toad hatching success and survival were subject to a balance between the snowpack water contribution to breeding pools and the periodicity and character of breeding season storms and post-breeding climate (whether it is cold or warm). When it is too cold, eggs and tadpoles are lost to freezing. This poses a risk as earlier snowmelt is expected to cue breeding earlier in the year, exposing young tadpoles (or eggs) to killing frosts in more variable conditions of early spring (Corn 2005, p. 60). When it is too warm, tadpoles are lost to pool desiccation. Alterations in the annual and seasonal hydrologic cycles that influence water volume and persistence in Yosemite toad breeding areas can thereby impact breeding success. The threat of climate change on individuals is significant, and is of high prevalence now and into the future.

Other Sources of Direct and Indirect Mortality

Direct and indirect mortality of Yosemite toads has occurred as a result of livestock grazing. Recently metamorphosed (juvenile) toads congregate in large numbers in mesic meadow habitats, and are at highest risk for trampling because their presence coincides with grazing activity (USFS *et al.* 2009, p. 61). Cattle have been observed to trample Yosemite toad eggs, and new metamorphs and subadult toads can fall into deep hoof prints and die (Martin 2008, p. 158). Martin (2008, p. 158) also witnessed some 60 subadult and metamorph toad deaths during the movement of 25 cattle across a stream channel bordered by willows within a meadow complex. Adult Yosemite toads trampled to death by cattle have also been observed (Martin 2002, pp. 1–3). This risk factor is likely of sporadic significance, and is of greatest concern where active grazing allotments coincide with breeding meadows. However, it is difficult to determine the degree of this impact without quantitative data.

Trampling and collapse of rodent burrows by recreationists, pets, and vehicles could lead to direct mortality of terrestrial life stages of the Yosemite toad. Recreational activity may also disturb toads and disrupt their behavior (Karlstrom 1962, pp. 3–34). Recreational anglers may be a source of introduced pathogens and parasites, and they have been observed using toads and tadpoles as bait (USFS *et al.* 2009, p. 66). However, Kagarise Sherman and Morton (1993, p. 196) did not find a relationship between the distance from the nearest road and the declines in their study populations, suggesting that human activity was not the cause of decline in that situation. Recreational activity may be of conservation concern, and this may increase with greater activity in mountain meadows. However, current available information does not indicate that recreational activity is a significant stressor for Yosemite toads.

Fire management practices over the last century have created the potential for severe fires in the Sierra Nevada. Wildfires do pose a potential direct mortality threat to Yosemite toads, although amphibians in general are thought to retreat to moist or subterranean refuges and thereby suffer low mortality during natural fires (Russel *et al.* 1999, pp. 374–384). However, data on the direct and indirect effects of fire on Yosemite toads are lacking.

USFS *et al.* (2009, p. 74) suggested that the negative effects of roads that have been documented in other amphibians, in concert with the substantial road network across a portion of the Yosemite toad's range, indicate this risk factor may be potentially significant to the species. Roads may facilitate direct mortality of amphibians through vehicle strikes (DeMaynadier and Hunter 2000, pp. 56–65). Levels of timber harvest and road construction have declined substantially since implementation of the California Spotted Owl Sierran Province Interim Guidelines in 1993, and some existing roads have been decommissioned or are scheduled to be decommissioned (USDA 2001a, p. 445). Therefore, the risks posed by new roads and timber harvests have declined, but those already existing still may pose risks to the species and its habitat. Collectively, direct mortality from land uses within the Yosemite toad range may have a population-level impact. However, we are aware of no studies that have quantified or estimated the prevalence of this particular threat to be able to assess its impact to frog populations. At the current time, direct and indirect mortality from roads are not considered to be a significant factor affecting the Yosemite toad.

Small Population Size

Although it is believed that the range of the Yosemite toad has not significantly contracted, the majority of populations across this area have been extirpated, and this loss has been significant relative to the historical condition (reflecting multitudes of populations within many watersheds across their geographic range) (see "Population Estimates and Status" above). Further, the populations that remain are small, numbering less than 20 males in most cases (Brown *et al.* 2011, p. 4). This situation renders these remnant populations susceptible to risks inherent to small populations (see Factor E discussion, "Small Population Size," for mountain yellow-legged frogs, above) including inbreeding depression and genetic drift, along with a higher probability of extirpation from unpredictable events such as severe storms or extended droughts.

Traill *et al.* (2009, p. 32) argued for a benchmark viable population size of 5,000 adult individuals (and 500 to prevent inbreeding) for a broad range of taxa, although this type of blanket figure has been disputed as an approach to conservation (Flather *et al.* 2011, pp. 307–308). Another estimate, specific to amphibians, is that populations of at least 100 individuals are less susceptible to demographic stochasticity (Schad 2007, p. 10). Amphibian species with highly fluctuating population size, high frequencies of local extinctions, and living in changeable environments may be especially susceptible to curtailment of dispersal and restriction of habitat (Green 2003, p. 331). These conditions are all likely applicable to the Yosemite toad.

Therefore, based on the best available commercial and scientific information, we conclude that small population size is a prevalent and significant threat to the species viability of the Yosemite toad across its range, especially in concert with other extant stressors (such as climate change).

Cumulative Impacts of Extant Threats

Interactive effects or cumulative impacts from multiple additive stressors acting upon Yosemite toad populations over time are evident by the documented declines in populations and abundance across the range of the species. Although no single causative factor linked to population declines in Yosemite toads has been confirmed in the literature (excepting perhaps extreme climate conditions such as droughts) (Kagarise Sherman and Morton 1993, p. 186; Jennings and Hayes 1994, pp. 50–53), there has been a decline in population abundance and numbers of extant populations inhabiting the landscape (Brown *et al.* 2012, pp. 115–131; Kagarise Sherman and Morton 1993, pp. 186–198). This pattern of decline suggests a factor or combination of factors common throughout the range of the toad. The available literature (Kagarise Sherman

and Morton 1993, pp. 186–198; Jennings and Hayes 1994, pp. 50–53; USFS *et al.* 2009, pp. 1–133; Martin 2008, pp. *i*–393) supports the contention that a combination of factors has interacted and is responsible for the decline observed in Yosemite toad populations over the past few decades.

Disease has been documented in Yosemite toad populations, and recent data documenting historic trends in Bd infection intensity are compelling (Dodge and Vredenburg 2012, p. 1), but disease has not been definitively tied to the observed rangewide decline. There is considerable evidence that various stressors, mediated via impacts to meadow hydrology following upslope land management practices over the last century, have detrimentally affected the quantity and quality of breeding meadows. Many of these stressors, such as grazing, have likely been more significant in the past than under current management standards. However, legacy effects remain and meadows tend not to recover without active intervention once excessive stream incision in their watershed is set in motion (Vankat and Major 1978, pp. 386–397). Certain stressors may be of concern, such as increasing recreational impacts and avian predation upon terrestrial life stages of toads, although we do not have sufficient data to document the magnitude of these particular stressors.

Given the evidence supporting the role of climate in reducing populations and potentially leading to the extirpation of many of the populations studied through the 1970s and into the early 1990s (Kagarise Sherman and Morton 1993, pp. 186–198), it is likely that this factor is either a primary driver, or at least a significant contributing factor in the declines that have been observed. Climate models predict increasing drought intensity and changes to the hydroperiod based on reduced snowpack, along with greater climate variability in the future (PRBO 2011, pp. 18–25). It is likely that these changes will exacerbate stress to the habitat specialist Yosemite toad through a pronounced impact on its ephemeral aquatic habitat, and also through an increase in the frequency of freezing and drying events that kill exposed Yosemite toad eggs and tadpoles. These changes and the resultant impacts will effectively reduce breeding success of remnant populations already at low abundance and still in decline. If an interaction such as winter stress and disease (Carey 1993, pp. 355–362) is the underlying mechanism for Yosemite toad declines, then the enhanced influence of climate change as a stressor may tip the balance further towards higher incidence and increased disease virulence, which would also lead to greater population declines and extirpations.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Yosemite toad. The Yosemite toad is the most narrowly distributed, Sierra Nevada endemic, pond-breeding amphibian (Shaffer *et al.* 2000, p. 246). Although it apparently still persists throughout a large portion of its historical range, it has been reduced to an estimated 12 percent of historical watersheds. In addition, remnant populations are predominantly small.

Yosemite toad populations are subject to threats from habitat degradation associated with land uses that negatively influence meadow hydrology, fostering meadow dewatering, and conifer and other invasive plant encroachment. These activities include grazing, the fire management regime of the past century, historic timber management activities, and associated road construction. The impacts from these threats are cumulatively of moderate magnitude, and their legacy impacts on meadow habitats act as a constraint upon extant populations now and are expected to hinder persistence and recovery into the future. Disease are threats of conservation concern that have likely also had an effect on populations leading to historical population decline, and these threats are operating currently and will continue to do so into the future, likely with impacts of moderate magnitude effects on Yosemite toad populations.

The direct, interactive, and cumulative effects of these various risk factors have acted to reduce the geographic extent and abundance of this species throughout its habitat in the Sierra Nevada. The combined effect of these stressors acting upon small remnant populations of Yosemite toads is of significant conservation concern. The Yosemite toad has a life history and ecology that make it sensitive to drought and anticipated weather extremes associated with climate change. Climate change is expected to become increasingly significant to the Yosemite toad and its habitat in the future throughout its range. Therefore, climate change represents a threat that has a high magnitude of impact as an indirect stressor via habitat loss and degradation, and as a direct stressor via enhanced risk of climate extremes to all life stages of toads.

The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that the Yosemite toad is likely to become endangered throughout all or a significant portion of its range within the foreseeable future, based on the immediacy, severity, and scope of the threats described above. These include habitat loss associated with degradation of meadow hydrology following stream incision consequent to the cumulative effects of historic land management activities, notably livestock grazing, and also the anticipated hydrologic effects upon habitat from climate change under listing Factor A. Additionally, we find that disease under listing Factor C was likely a contributor to the recent historic decline of the Yosemite toad, and may remain an important factor limiting recruitment in remnant populations. We also find that the Yosemite toad is likely to become endangered through the direct effects of climate change impacting small remnant populations under Factor E, likely compounded with the cumulative effect of other threat factors (such as disease).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the species, and have determined that the Yosemite toad meets the definition of threatened under the Act, rather than endangered. This is because the impacts from the threats are occurring now at moderate magnitude, but are likely to become of high magnitude in the foreseeable future across the species' entire range, making the species likely to become in danger of extinction. While population decline has been widespread, the rate of decline is not so severe to indicate extinction is imminent, but this rate could increase as stressors such as climate change impact small remnant populations. Further, the geographic extent of the species remains rather widespread throughout its historic range, conferring some measure of ecological and geographic redundancy. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Yosemite toad as threatened in accordance with sections 3(20) and 4(a)(1) of the Act.

The term "threatened species" means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an

endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term "foreseeable future" but it likely describes the extent to which the Service could reasonably rely on predictions about the future in making determinations about the future conservation status of the species. In considering the foreseeable future as it relates to the status of the Yosemite Toad, we considered the historical data to identify any relevant existing trends that might allow for reliable prediction of the future (in the form of extrapolating the trends). We also considered how current stressors are affecting the species and whether we could reliably predict any future trends in those stressors that might affect the species recognizing that our ability to make reliable predictions for the future is limited by the quantity and quality of available data. Thus the foreseeable future includes the species response to these stressors and any trends.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Yosemite toad proposed for listing in this rule is highly restricted in its range and the threats occur throughout its range. Therefore, we assessed the status of the species throughout its entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, above.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Sierra Nevada mountain yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of

section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of species that compete with or prey upon the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad;

(3) The unauthorized release of biological control agents that attack any life stage of these species;

(4) Unauthorized modification of the mountain meadow habitats or associated upland areas important for the breeding, rearing, and survival of these species; and

(5) Unauthorized discharge of chemicals or fill material into any waters in which the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 2800 Cottage Way, Suite W–2606, Sacramento, CA 95825–1846 (telephone 916–414–6464; facsimile 916–414–6486).

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. The purpose of such review is to ensure that our proposed actions are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions in this proposed listing.

We will consider all comments and information we receive during the comment period on this proposed rule during 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 the **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

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.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as endangered or threatened under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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.

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 Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Sacramento 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—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for "Frog, mountain yellow-legged (northern California DPS)", "Frog, Sierra Nevada yellow-legged", and "Toad, Yosemite" to the List of Endangered and Threatened Wildlife in alphabetical order under AMPHIBIANS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Frog, mountain yellow-legged (northern California DPS).	*Rana muscosa*	U.S.A. (CA)	Entire	E		NA	NA
*	*	*	*	*	*	*	
Frog, Sierra Nevada yellow-legged.	*Rana sierrae*	U.S.A. (CA, NV)	Entire	E		NA	NA
*	*	*	*	*	*	*	
Toad, Yosemite	*Anaxyrus canorus*	U.S.A. (CA)	Entire	T		NA	NA
*	*	*	*	*	*	*	

Dated: March 15, 2013.

Rowan Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–09600 Filed 4–24–13; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 78 Thursday,
No. 80 April 25, 2013

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and the Yosemite Toad; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0074; 4500030113]

RIN 1018–AY07

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and the Yosemite Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the Sierra Nevada yellow-legged frog, the northern distinct population segment (DPS) (populations that occur north of the Tehachapi Mountains) of the mountain yellow-legged frog, and the Yosemite toad under the Endangered Species Act of 1973, as amended (Act). In total, we propose to designate as critical habitat approximately 447,341 hectares (1,105,400 acres) for the Sierra Nevada yellow-legged frog in Butte, Plumas, Lassen, Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Alpine, Mariposa, Mono, Madera, Tuolumne, Fresno, and Inyo Counties, California; approximately 89,637 hectares (221,498 acres) for the northern DPS of the mountain yellow-legged frog in Fresno and Tulare Counties, California; and approximately 303,889 hectares (750,926 acres) for the Yosemite toad in Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California.

DATES: We will accept comments received or postmarked on or before June 24, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by June 10, 2013.

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 Search box, enter Docket No. FWS–R8–ES–2012–0074, 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 "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0074; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Information Requested below for more information).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/sacramento*, *www.regulations.gov* at Docket No. FWS–R8–ES–2012–0074, and at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jan Knight, Acting Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825; by telephone 916–414–6600; or by facsimile 916–414–6712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Designations and revisions of critical habitat can only be completed by issuing a rule.

This rule proposes to designate critical habitat for the Sierra Nevada yellow-legged frog, the northern distinct population segment of the mountain yellow-legged frog, and the Yosemite toad.

- We are proposing critical habitat for the Sierra Nevada yellow-legged frog under the Endangered Species Act. In total, approximately 447,341 hectares (1,105,400 acres) are being proposed for designation as critical habitat in Butte, Plumas, Lassen, Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Alpine, Mariposa, Mono, Madera, Tuolumne, Fresno, and Inyo Counties, California.
- We are proposing critical habitat for the northern DPS of the mountain yellow-legged frog under the Endangered Species Act. In total, approximately 89,637 hectares (221,498 acres) are being proposed for designation as critical habitat in Fresno and Tulare Counties, California.
- We are proposing critical habitat for the Yosemite toad under the Endangered Species Act. In total, approximately 303,889 hectares (750,926 acres) are being proposed for designation as critical habitat in Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California.

The basis for our action. Under the Act, any species that is determined to be a threatened or endangered species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless 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.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from

other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and Yosemite toad, and their habitats;

(b) What may constitute "physical or biological features essential to the conservation of the species," within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas occupied at the time of listing and that contain features essential to the conservation of these species should be included in the designation, and why; and

(f) What areas not occupied at the time of listing are essential for the conservation of these species, and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on these species and their proposed critical habitats.

(4) Information on the projected and reasonably likely impacts of climate change on the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad, and on their proposed critical habitats. We also seek information on special management considerations or protection that may be needed in the proposed critical habitat areas, including management for the potential effects of climate change.

(5) Any probable economic, national security, or other relevant impacts that may result from designating any area as critical habitat that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(6) Whether any specific areas proposed for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(8) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described 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, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Please see the proposed listing rule published elsewhere in today's **Federal Register** for a complete history of previous Federal actions.

On September 9, 2011, the U.S. District Court for the District of Columbia approved a settlement agreement laying out a multi-year listing work plan for addressing candidate species, including the Sierra Nevada yellow-legged frog, the northern distinct population segment of the mountain yellow-legged frog, and the Yosemite toad. As part of this agreement, the Service agreed to publish a proposed rule in the **Federal Register** on whether to list these species and designate critical habitat by September 30, 2013. This is the proposed rule to designate critical habitat for these species.

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog and the Yosemite toad in this section of the proposed rule. For more information on these species' taxonomy, life history, habitat, and population descriptions, refer to the 12-month finding published January 25, 2007 (72 FR 34557) and the proposed listing rule published elsewhere in today's **Federal Register** for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog and the 12-month finding published in December 10, 2002 (67 FR 75834) and the proposed listing rule published elsewhere in today's **Federal Register** for the Yosemite toad.

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 a 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 geographic area occupied by the species at the time of listing are included in a critical habitat designation if they contain physical or biological features (1) that are essential to the conservation of the species and (2) that 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 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 (PCEs), such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, 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 geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas we should designate 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 articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. 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 these 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.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B for these species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog and the Yosemite toad.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog and the Yosemite toad.

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad from studies of the species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential to the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad:

Mountain Yellow-Legged Frog Complex

Space for Individual and Population Growth and for Normal Behavior

Mountain yellow-legged frogs are highly aquatic (Stebbins 1951, p. 340; Mullally and Cunningham 1956a, p. 191; Bradford *et al.* 1993, p. 886). Although they tend to stay closely associated with high-elevation water bodies, they are capable of longer distance travel, whether along stream courses or over land in between breeding, foraging, and overwintering habitat within lake complexes. Individuals may use different water bodies or different areas within the same water body for breeding, foraging, and overwintering (Matthews and Pope 1999, pp. 620–623; Wengert 2008, p. 18). Within water bodies, adults and tadpoles prefer shallower areas and shelves (Mullally and Cunningham 1956a, p. 191; Jennings and Hayes 1994, p. 77) with solar exposure (features rendering these areas warmer (Bradford 1984, p. 973), which also make them more suitable for prey species). High-elevation habitats tend to have lower relative productivity (suggesting populations are often resource limited), as sufficient space is also needed to avoid competition with other frogs and tadpoles for limited food resources.

Therefore, based on the information above, we identify high-elevation water bodies, lake and pond complexes, and adjacent lands within and proximate to water bodies utilized by extant frog metapopulations (mountain lakes and streams) to be a physical or biological feature needed by mountain yellow-legged frogs to provide space for their individual and population growth and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Adult mountain yellow-legged frogs are thought to feed preferentially upon terrestrial insects and adult stages of aquatic insects while on the shore and in shallow water (Bradford 1983, p. 1171); however, feeding studies on mountain yellow-legged frogs in the Sierra Nevada are limited. Remains found inside the stomachs of mountain yellow-legged frogs in southern California represented a wide variety of invertebrates, including beetles, ants, bees, wasps, flies, true bugs, and dragonflies (Long 1970, p. 7). Larger frogs have been observed to eat more aquatic true bugs (Order Hemiptera) (Jennings and Hayes 1994, p. 77). Adult mountain yellow-legged frogs have also been found to eat Yosemite toad tadpoles (Mullally 1953, p. 183; Zeiner *et al.* 1988, p. 88) and Pacific treefrog tadpoles (Pope 1999b, p. 163–164), and they are also cannibalistic (Heller 1960, p. 127; Vredenburg *et al.* 2005, p. 565).

Mountain yellow-legged frog tadpoles graze on benthic detritus, algae, and diatoms along rocky bottoms in streams, lakes, and ponds (Bradford 1983, p. 1171; Zeiner *et al.* 1988, p. 88). Tadpoles have also been observed cannibalizing eggs (Vredenburg 2000, p. 170) and feeding on the carcasses of dead metamorphosed frogs (Vredenburg *et al.* 2005, p. 565). Other species may compete with frogs and tadpoles for limited food resources. Introduced fishes are the primary competitors, reducing the available prey base for mountain yellow-legged frogs (Finlay and Vredenburg 2007, p. 2187).

The ecosystems utilized by mountain yellow-legged frogs have inherent community dynamics that sustain the food web. Habitats, therefore, must maintain sufficient water quality to sustain the frogs within the tolerance range of healthy individual frogs, as well as acceptable ranges for maintaining the underlying ecological community. These key physical parameters include pH, temperature, nutrients, and uncontaminated water. The high-elevation habitats that support mountain yellow-legged frogs require sufficient sunlight to warm the water where they congregate, and to allow subadults and adults to sun themselves.

Persistence of frog populations is dependent on a sufficient volume of water feeding into their habitats to provide the aquatic conditions necessary to sustain multiyear tadpoles through metamorphosis. This makes the hydrologic basin (or catchment area) a critical source of water for supplying downgradient habitats. The catchment area sustains water levels in lakes and streams used by mountain yellow-legged frogs via surface and ground water transport, which are crucially important for maintaining frog habitat.

Therefore, based on the information above, we identify sufficient quantity and quality of source waters that support habitat used by mountain yellow-legged frogs (including the balance of constituents to support a sustainable food web with a sufficient prey base), absence of competition from introduced fishes, exposure to solar radiation, and shallow (warmer) areas or shelves within ponds or pools to be a physical or biological feature needed by

mountain yellow-legged frogs to provide for their nutritional and physiological requirements.

Cover or Shelter

Mountain yellow-legged frogs require conditions that allow for overwinter survival, including lakes or pools within streams that do not freeze to the bottom, or refugia within or adjacent to such systems (such as underwater crevices) so that overwintering tadpoles and frogs do not freeze or experience anoxic conditions during their winter dormancy period (Bradford 1983, pp. 1173–1179; Matthews and Pope 1999, pp. 622–623; Pope 1999a, pp. 42–43; Vredenburg *et al.* 2005, p. 565). Cover for adults to protect themselves from terrestrial and avian predators is also an important habitat feature, especially in cases where aquatic habitat itself does not provide adequate protection from terrestrial or avian predators due to insufficient water depth. Although cover within aquatic habitat may be important in the short term to avoid fish predation, the observation of low coexistence between introduced trout and frog populations (Knapp 1996, pp. 1–44) suggests that cover alone is insufficient to preclude extirpation by fish predation and competition.

Therefore, based on the information above, we identify refuge from lethal overwintering conditions (freezing and anoxia), physical cover from avian and terrestrial predators, and lack of predation by introduced fishes to be a physical or biological feature needed by the mountain yellow-legged frog to provide cover and shelter.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

As described in the proposed listing determination published elsewhere in today's **Federal Register**, mountain yellow-legged frogs are known to utilize habitats differently depending on season (Matthews and Pope 1999, pp. 620–623; Wengert 2008, p.18). Reproduction and rearing requires water bodies (or adequate refugia) that are sufficiently deep that they do not dry out in summer or freeze through in winter (except infrequently). Therefore, the conditions within the catchment for these habitats must be maintained such that sufficient volume and timing of snowmelt and adequate transport of precipitation to these rearing water bodies sustain the appropriate balance of conditions to maintain mountain yellow-legged frog life-history needs. Conditions that determine the depth, siltation rates, or persistence of these water bodies are key determinants of habitat functionality (within tolerance ranges of each particular system). Finally, pre-breeding adult frogs need access to these water bodies in cases where these populations are utilizing different breeding and nonbreeding habitat.

Therefore, based on the information above, we find the persistence of breeding and rearing habitats and access to and from seasonal habitat areas (whether via aquatic or terrestrial migration) to be a physical or biological feature needed by the mountain yellow-legged frog to allow successful reproduction and development of offspring.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

In addition to migration routes (areas that provide back and forth between habitat patches within the metapopulation) without impediments across the landscape between proximal ponds within the ranges of functional metapopulations, mountain yellow-legged frogs require dispersal corridors (areas for recolonization and range expansion of further areas) to reestablish populations in extirpated areas within its current range to provide ecological and geographic resiliency (USFS *et al.* 2009, p. 35). Maintenance and reestablishment of such populations across a diversity of ecological landscapes is necessary to provide sufficient protection against changing environmental circumstances (such as climate change). This provides functional redundancy to safeguard against stochastic events (such as wildfires), but this redundancy also may be necessary as different regions or microclimates respond to changing climate conditions.

Establishing or maintaining populations across a broad geographic area spreads out the risk to individual populations across the range of the species, thereby conferring species resilience. Finally, protecting a wide range of habitats across the occupied range of the species simultaneously maintains genetic diversity of the species, which protects the underlying integrity of the major genetic clades (Vredenburg *et al.* 2007, pp. 370–371), whose persistence is important to the ecological fitness of these species as a whole (Allentoft and O'Brien 2010 pp. 47–71; Johansson *et al.* 2007, pp. 2693–2700).

Therefore, based on the information above, we identify dispersal routes (generally fish free), habitat connectivity, and a diversity of high-quality habitats across multiple watersheds throughout the geographic extent of the species' ranges and sufficiently representative of the major genetic clades to be a physical or biological feature needed by the mountain yellow-legged frog.

Yosemite Toad

Space for Individual and Population Growth and for Normal Behavior

As summarized in the proposed listing determination published elsewhere in today's **Federal Register**, the Yosemite toad is commonly associated with wet meadow habitats in the Sierra Nevada of California. It occupies aquatic, riparian, and upland habitat throughout a majority of its range. Suitable habitat for the Yosemite toad is created and maintained by the natural hydrologic and ecological processes that occur within the aquatic breeding habitats and adjacent upland areas. Yosemite toads have been documented breeding in wet meadows and slow-flowing streams (Jennings and Hayes 1994, pp. 50–53), shallow ponds, and shallow areas of lakes (Mullally 1953, pp. 182–183). Upland habitat use varies among the different sexes and life stages of the toad (Morton and Pereyra 2010, p. 391); however, all Yosemite toads utilize areas within at least 850 m (2,789 ft) of breeding sites for foraging and overwintering, with juveniles predominantly overwintering in close proximity to breeding areas (Martin 2008, p. 154; Morton and Pereyra 2010, p. 391).

Yosemite toads must be able to move between aquatic breeding habitats, upland foraging sites, and overwintering areas. Yosemite toads have been documented to move a maximum of 1.26 km (0.78 mi) between breeding and upland habitats (Liang 2010, p. ii). Based on observational data from three previous studies, Liang *et al.* (2010, p. 6) estimated the maximum travel distance for the Yosemite toad to be 1.5 km (0.9 mi). Upland habitat used for foraging includes lush meadows with herbaceous vegetation (Morton and Pereyra 2010, p. 390), alpine-dwarf scrub, red fir, lodgepole pine, and subalpine conifer vegetation types (Liang 2010, p. 81), and the edges of talus slopes (Morton and Pereyra 2010, p. 391).

Therefore, based on the information above, we identify both lentic (still) and lotic (flowing) water bodies, including meadows, and adjacent upland habitats with sufficient refugia (for example, logs, rocks) and overwintering habitat that provide space for normal behavior to be a physical or biological feature needed by Yosemite toads for their

individual and population growth and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Little is known about the diet of Yosemite toad tadpoles. However, their diet presumably approximates that of related *Anaxyrus* species, and likely consists of microscopic algae, bacteria, and protozoans. Given their life history, it is logical to presume they are opportunistic generalists. Martin (1991, pp. 22–23) reports tadpoles foraging on detritus and plant materials (algae); but also identifies Yosemite toad tadpoles as potential opportunistic predators, having observed them feeding on the larvae of Pacific chorus frog and predaceous diving beetle, that may have been dead or live. The adult Yosemite toad diet comprises a large variety of insects, with Hymenoptera (ants, wasps, bees, sawflies, horntails) comprising the largest proportion of the summer prey base (Martin 1991, pp. 19–22).

The habitats utilized by the Yosemite toad have inherent community dynamics that sustain the food web. Habitats also must maintain sufficient water quality and moisture availability to sustain the toads throughout their life stages, so that key physical parameters within the tolerance range of healthy individual frogs, as well as acceptable ranges for maintaining the underlying ecological community, are maintained. These parameters include, but are not limited to, pH, temperature, precipitation, slope, aspect, vegetation, and lack of anthropogenic contaminants at harmful concentrations. Yosemite toad locations are associated with low slopes, specific vegetation types (wet meadow, alpine-dwarf shrub, montane chaparral, red fir, and subalpine conifer), and certain temperature regimes (Liang and Stohlgren 2011, p. 217).

Therefore, based on the information above, we identify sufficient quantities and quality of source waters, adequate prey resources and the balance of constituents to support the natural food web, low slopes, and specific vegetation communities to be a physical or biological feature needed by Yosemite toads to provide for their nutritional and physiological requirements.

Cover or Shelter

When not actively foraging, Yosemite toads take refuge under surface objects, including logs and rocks (Stebbins 1951, pp. 245–248; Karlstrom 1962, pp. 9–10), and in rodent burrows (Liang 2010, p. 95). Thus, areas of shelter interspersed with other moist environments, such as seeps and springs, are necessary. Yosemite toads also utilize rodent burrows (Jennings and Hayes 1994, pp. 50–53), as well as cover under surface objects and below willows, for overwintering (Kagarise Sherman 1980, pers. obs., as cited in Martin 2008, p. 158).

Therefore, based on the information above, we identify surface objects, rodent burrows, and other cover or overwintering areas to be a physical or biological feature needed by the Yosemite toad to provide cover and shelter.

Sites for Breeding, Reproduction or Rearing (or Development) of Offspring

As summarized above, Yosemite toads are prolific breeders that lay their eggs at snowmelt. Suitable breeding and embryonic rearing habitat generally occurs in very shallow water at the edges of meadows or in slow-flowing runoff streams, but also consists of subalpine lentic and lotic habitats, including wet meadows, lakes, and small ponds, as well as shallow spring channels, side channels, and sloughs. Eggs typically hatch within 4 to 6 days (Karlstrom 1962, p. 19), with rearing through metamorphosis taking approximately 5 to 7 weeks after eggs are laid (USFS *et al.* 2009, p. 250). These times can vary depending on prey availability, temperature, and other abiotic factors.

The suitability of breeding habitat may vary from year to year due primarily to the amount of precipitation and local temperatures. Given the variability of habitats available for breeding, the high site fidelity of breeding toads, an opportunistic breeding strategy, as well as the importance of lotic systems during periods of low precipitation (Roche *et al.* 2012, p. 60), Yosemite toads require a variety of aquatic habitats to successfully maintain populations.

Therefore, based on the information above, we identify both lentic and slow-moving lotic aquatic systems that provide sufficient temperature for hatching and that maintain sufficient water for metamorphosis (a minimum of 4 weeks) to be a physical or biological feature needed by the Yosemite toad to allow for successful reproduction and development of offspring.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

In addition to migration routes without impediments between upland areas and breeding locations across the landscape, Yosemite toads require dispersal corridors to utilize a wide range of breeding habitats in order to provide ecological and geographic resiliency in the face of changing environmental circumstances (for example, climate). This provides functional redundancy to safeguard against stochastic events, such as wildfires, but also may be necessary as different regions or microclimates respond to changing climate conditions. Maintaining populations across a broad geographic extent also reduces the risk of a stochastic event that extirpates multiple populations across the range of the species, thereby conferring species resilience. Finally, protecting a wider range of habitats across the occupied range of the species can assist in maintaining the genetic diversity of the species.

Therefore, based on the information above, we identify dispersal routes, habitat connectivity, and a diversity of habitats throughout the geographic extent of the species' range that sufficiently represent the distribution of the species (including inherent genetic diversity) to be a physical or biological feature needed by the Yosemite toad.

Primary Constituent Elements (PCEs) for the Mountain Yellow-Legged Frog Complex and Yosemite Toad

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the mountain yellow-legged frog complex and Yosemite toad in areas occupied at the time of listing (in this case, areas that are currently occupied), focusing on the features' PCEs. We consider PCEs to be the elements of physical or biological features that are essential to the conservation of the species.

Mountain Yellow-Legged Frog Complex

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to the Sierra Nevada and northern DPS of the mountain yellow-legged frogs are:

(1) *Aquatic habitat for breeding and rearing.* Habitat that consists of permanent water bodies, or those that are either hydrologically connected with, or close to, permanent water bodies, including, but not limited to, lakes, streams, rivers, tarns, perennial creeks (or permanent plunge pools within intermittent creeks), pools (such as a body of impounded water contained above a natural dam), and other forms of aquatic habitat. This habitat must:

(a) Be of sufficient depth not to freeze solid (to the bottom) during the winter (no less than 1.7 m (5.6 ft), but generally greater than 2.5 m (8.2 ft), and optimally 5 m (16.4 ft) or deeper (unless some other refuge from freezing is available)).

(b) Maintain a natural flow pattern, including periodic flooding, and have functional community dynamics in order to provide sufficient productivity and a prey base to support the growth and development of rearing tadpoles and metamorphs.

(c) Be free of fish and other introduced predators.

(d) Maintain water during the entire tadpole growth phase (a minimum of 2 years). During periods of drought, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they may still be considered essential breeding habitat if they provide sufficient habitat in most years to foster recruitment within the reproductive lifespan of individual adult frogs.

(e) Contain:

(i) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders;

(ii) Shallower lake microhabitat with solar exposure to warm lake areas and to foster primary productivity of the food web;

(iii) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(iv) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks to provide cover from predators; and

(v) Sufficient food resources to provide for tadpole growth and development.

(2) *Aquatic nonbreeding habitat (including overwintering habitat).* This habitat may contain the same characteristics as aquatic breeding and rearing habitat (often at the same locale), and may include lakes, ponds, tarns, streams, rivers, creeks, plunge pools within intermittent creeks, seeps, and springs that may not hold water long enough for the species to complete its aquatic life cycle. This habitat provides for shelter, foraging, predator avoidance, and aquatic dispersal of juvenile and adult mountain yellow-legged frogs. Aquatic nonbreeding habitat contains:

(a) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders;

(b) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(c) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks to provide cover from predators;

(d) Sufficient food resources to provide for tadpole growth and development;

(e) Overwintering refugee, where thermal properties of the microhabitat protect hibernating life stages from winter freezing, such as crevices or holes within granite, in and near shore; and/or

(f) Streams, stream reaches, or wet meadow habitats that can function as corridors for movement between aquatic habitats used as breeding or foraging sites.

(3) *Upland areas.*

(a) Upland areas adjacent to or surrounding breeding and nonbreeding aquatic habitat that provide area for feeding and movement by mountain yellow-legged frogs.

(i) For stream habitats, this area extends 25 m (82 ft) from the bank or shoreline.

(ii) In areas that contain riparian habitat and upland vegetation (for example, mixed conifer, ponderosa pine, montane hardwood conifer, and montane riparian woodlands), the canopy overstory should be sufficiently thin (generally not to exceed 85 percent) to allow sunlight to reach the aquatic habitat and thereby provide basking areas for the species.

(iii) For areas between proximate (within 300m (984 ft)) water bodies (typical of some high mountain lake habitats), the upland area extends from the bank or shoreline between such water bodies.

(iv) Within mesic habitats such as lake and meadow systems, the entire area of physically contiguous or proximate habitat is suitable for dispersal and foraging.

(b) Upland areas (catchments) adjacent to and surrounding both breeding and nonbreeding aquatic habitat that provide for the natural hydrologic regime (water quantity) of aquatic habitats. These upland areas should also allow for the maintenance of sufficient water quality to provide for the various life stages of the frog and its prey base.

Yosemite Toad

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to the Yosemite toad are:

(1) *Aquatic breeding habitat.* (a) This habitat consists of bodies of fresh water, including wet meadows, slow-moving streams, shallow ponds, spring systems, and shallow areas of lakes, that:

(i) Are typically (or become) inundated during snowmelt,

(ii) Hold water for a minimum of 5 weeks, and

(iii) Contain sufficient food for tadpole development.

(b) During periods of drought or less than average rainfall, these breeding sites may not hold water long enough for individual Yosemite toads to complete metamorphosis, but they are still considered essential breeding habitat because they provide habitat in most years.

(2) *Upland areas.* (a) This habitat consists of areas adjacent to or surrounding breeding habitat up to a distance of 1.25 km (0.78 mi) in most cases (that is, depending on surrounding landscape and dispersal barriers), including seeps, springheads, and areas that provide:

(i) Sufficient cover (including rodent burrows, logs, rocks, and other surface objects) to provide summer refugia,

(ii) Foraging habitat,

(iii) Adequate prey resources,

(iv) Physical structure for predator avoidance,

(v) Overwintering refugia for juvenile and adult Yosemite toads,

(vi) Dispersal corridors between aquatic breeding habitats,

(vii) Dispersal corridors between breeding habitats and areas of suitable summer and winter refugia and foraging habitat, and/or

(viii) The natural hydrologic regime of aquatic habitats (the catchment).

(b) These upland areas should also allow maintain sufficient water quality to provide for the various life stages of the Yosemite toad and its prey base.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species through the identification of the PCEs sufficient to support the life-history processes of the species. All units and subunits proposed for designation as critical habitat are currently occupied by Sierra Nevada mountain yellow-legged frogs, the northern DPS of the mountain yellow-legged frogs, or Yosemite toads, and contain the PCEs sufficient to support the life-history needs of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may

require special management considerations or protection.

The features essential to the conservation of the Sierra Nevada yellow-legged frog and northern DPS of the mountain yellow-legged frog may require special management considerations or protection to reduce the following threats: The persistence of introduced trout populations in essential habitat; the effects from water withdrawals and diversions; impacts associated with timber harvest and fuels reduction activities; impacts associated with livestock grazing; and intensive use by recreationists, including packstock camping and grazing.

Management activities that could ameliorate the threats described above include (but are not limited to) nonnative fish eradication; installation of fish barriers; modifications to fish stocking practices in certain water bodies; physical habitat restoration; and responsible management practices covering potentially incompatible activities, such as timber harvest and fuels management, water supply development and management, livestock and packstock grazing, and other recreational uses. These management practices will protect the PCEs for the mountain yellow-legged frog by reducing the stressors currently affecting population viability. Additionally, management of critical habitat lands will help maintain the underlying habitat quality, foster recovery, and sustain populations currently in decline.

The features essential to the conservation of the Yosemite toad may require special management considerations or protection to reduce the following threats: Impacts associated with timber harvest and fuels reduction activity; impacts associated with livestock grazing; the spread of pathogens; and intensive use by recreationists, including packstock camping and grazing.

Management activities that could ameliorate the threats described above include (but are not limited to) physical habitat restoration and responsible management practices covering potentially incompatible beneficial uses such as timber harvest and fuels management, water supply development and management, livestock and packstock grazing, and other recreational uses. These management activities will protect the PCEs for the Yosemite toad by reducing the stressors currently affecting population viability. Additionally, management of critical habitat lands will help maintain or enhance the necessary environmental components, foster recovery, and sustain populations currently in decline.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review 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), we consider whether designating additional areas outside those currently occupied are necessary to ensure the conservation of the species.

In the case of the mountain yellow-legged frog complex and the Yosemite toad, we are proposing to designate critical habitat in areas within the geographic areas that are currently occupied by the species (see "Current Range and Distribution" section above). We are proposing to designate only geographic areas occupied by the species because the present geographic range is of similar extent to the historic range and therefore sufficient for the conservation of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the mountain yellow-legged frog complex and the Yosemite toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat units that we have determined based on the best available scientific and commercial information are known to be currently occupied and contain the primary constituent elements of the physical or biological features essential to the conservation of the mountain yellow-legged frog complex and the Yosemite toad (under section 3(5)(A)(i) of the Act). These species exhibit a metapopulation life-history model, and although they tend towards high site-fidelity, individuals within these populations can and do move through suitable habitat to take advantage of changing conditions in a dynamic fashion through space and time. Additional areas outside the aquatic habitat within each unit or subunit were incorporated to assist in maintaining the hydrology of the aquatic features and to recognize the importance of dispersal between populations. In most instances, we aggregated areas we know to be occupied, together with areas needed for hydrologic function and dispersal into single units or subunits as described at 50 CFR 424.12(d) of our regulations. However, at any given moment, not all areas within each unit are being used by the species at all times, because, by definition, individuals within metapopulations move in space and time.

For the purposes of this proposed rule, we equate the geographical area occupied at the time of listing with the current range for each of the species (50 CFR 424.12). Therefore, we propose to designate specific areas within the geographical area occupied at the time of listing (see criteria below) that are essential to the conservation of the species and which may require special management considerations or protection pursuant to section 3(5)(A)(i) of the Act. Within the current range of the species, to the best of our knowledge, some watersheds may or may not be actively utilized by extant frog populations, but we consider these areas to be occupied at the scale of the geographic range of the species. We use the term utilized to refer to the finer geographic scale at the watershed or survey locality level of resolution.

For this proposed rule, we completed the following basic steps to delineate critical habitat (specific methods follow below):

(1) We compiled all available data from observations of Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad;

(2) We identified, based on the best available science, populations that are extant at the time of listing (current) versus those that are extirpated;

(3) We identified areas containing the components comprising the PCEs that may require special management considerations or protection;

(4) We circumscribed boundaries of potential critical habitat units based on the above information; and

(5) We removed all areas practicable that did not have the specific PCE components, and therefore are not

considered essential to the conservation of the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, or Yosemite toad.

Specific criteria and methodology used to determine proposed critical habitat unit boundaries are discussed by species below.

Mountain Yellow-Legged Frog Complex

(1) Data Sources:

We obtained observational data from the following sources to include in our Geographic Information System (GIS) database for mountain yellow-legged frog: (a) Surveys of the National Parks within the range of the mountain yellow-legged frog, including information collected by R. Knapp and G. Fellers; (b) CDFG Sierra Lakes Inventory Project survey data; (c) SNAMPH survey data from the USFS; and (d) unpublished data collected by professional biologists during systematic surveys. Collectively, our survey data spanned August 1993 through September 2010. We cross-checked our database against the California Natural Diversity Data Base (CNDDB) reports, and we opted to utilize the above sources in lieu of the CNDDB data, due to the systematic nature of the surveys and their inherent quality control.

(2) Occurrence Criteria:

We considered extant all localities where presence of living mountain yellow-legged frog has been confirmed since 1995, unless the last two (or more) consecutive surveys have found no individuals of any life stage. The 1995 cutoff date was selected because it reflects a logical break point given the underlying sample coverage and relatively long lifespan of the frogs, and it is consistent with the recent status evaluation by CDFG, and therefore consistent with trend analyses compiled as part of that same effort (CDFG 2011, pp. 17–25). We considered the specific areas within the currently occupied geographic range of the species that include all higher quality habitat (see "(3) Habitat Unit Delination," below) that is contiguous to extant mountain yellow-legged frog populations. To protect remnant populations, areas where surveys confirmed the presence of mountain yellow-legged frog using the criteria above were generally considered necessary to conservation, including: All hydrologically connected waters within a distance of 3 km (1.9 mi), all areas overland within 300 m (984 ft) of survey locations, and the remainder of the watershed upgradient of that location. The 3-km (1.9-mi) boundary was derived from empirical data recording frog movements using radiotelemetry (see derivation below). Watersheds containing PCEs (indicating high-quality habitat), and with multiple and repeated positive survey records spread throughout the habitat area, were completely included. If two contiguous subareas within adjacent watersheds (one utilized and one not known to be utilized) had a predominance of PCEs indicating high-quality habitat, the habitat was included up to approximately 3 km (1.9 mi) of the survey location. These areas are considered essential to conservation and recovery, because they are presumed to be within the dispersal capacity of extant frog metapopulations or their progeny.

Two detailed movement studies using radiotelemetry have been completed for mountain yellow-legged frogs from which movement and home range data may be derived. One, focused on the mountain yellow-legged frog, occurred in a lake complex in Dusy Basin in Kings Canyon National Park (Matthews and Pope 1999, pp. 615–624). The other included a stream-dwelling population of the Sierra Nevada yellow-legged frog in Plumas County, California (Wengert 2008, pp. 1–32). The movement patterns of the mountain yellow-legged frog within the lake complex included average distances moved within a 5-day period ranging from 43–145 m (141–476 ft) (Matthews and Pope, 1999, p. 620), with frogs traveling greater distances in September compared to August and October. This period reflects foraging and dispersal activity during the pre-wintering phase. Estimated average home ranges from this study ranged from 53 square meters (174 square ft) in October to more than 5,300 square meters (0.4 ac) in September (Matthews and Pope 1999, p. 620). The stream telemetry study of the Sierra Nevada yellow-legged frog recorded movement distances from 3–2,300 m (10–7,546 ft) (average was 485 m (1,591 ft)) within a single season (July through September), with as much as 3,300 m (10,827 ft) of linear stream habitat utilized by a single frog across seasons (Wengert 2008, p. 11). Home ranges in this study were estimated at 167,032 square meters (12.6 ac). The farthest reported distance of a mountain yellow-legged frog from water is 400 m (1,300 ft) (Vredenburg *et al.* 2005, p. 564). Frogs within habitat connected by lake networks or migration corridors along streams exhibit greater movement and home range. Frogs located in a mosaic of fewer lakes or with greater distances between areas with high habitat value are not expected to move as far over dry land. We used values within the range of empirical data to derive our boundaries, but erred towards the maxima, for reasons explained below.

These empirical results may not necessarily be applied across the range of the mountain yellow-legged frog. It is likely that movement is largely a function of the underlying habitat mosaic particular to each location. Available data are limited to the two studies of different species spanning distinct habitat types. Therefore, generalizations across the range are may not be inaccurate; however, two points are evident. First, although mountain yellow-legged frogs are known to be highly associated with aquatic habitat and to exhibit high site-fidelity (Stebbins 1951, p. 340; Mullally and Cunningham 1956a, p. 191; Bradford *et al.* 1993, p. 886; Pope 1999a, p. 45), they do have the capacity to move relatively large distances, even within a single season. Our criteria for deriving critical habitat units, therefore, must not only take into account dispersal behavior and home range, but also consider the underlying habitat mosaic (and site-specific data, where available) when defining final boundaries for critical habitat.

Another factor to consider when buffering home ranges is encounter probability within the habitat range (whether the point location where the surveyed frog is observed is at the center or edge of a home range). It is more likely that surveys will encounter individuals in their preferred habitat areas, especially when point counts are attributed to main lakes (and during the height of the breeding season, or closer to the overwintering season). Nevertheless, actual utilized habitat may be removed in time and space from point locations identified during one-time surveys. The underlying uncertainty associated with point encounters means that it is difficult, and possibly inaccurate, to utilize bounded home ranges from empirical data when you lack site-specific information regarding habitat use about the surveyed sample unit. Additionally, emigration and recolonization of extirpated sites require movement through habitat across generations, which may venture well beyond estimated single-season home ranges or movement distances. Therefore, the estimates from the very limited field studies are available as guidelines, but we also use the nature and physical layout of underlying habitat features (or site-specific knowledge, where available) to better define critical habitat units.

Finally, these results remain as estimates from studies conducted in single localities. Measured distance

movements and estimated home ranges from limited studies should not be the sole determinants in habitat unit delineation. The ability of frogs to move along good habitat corridors should also be considered. This is especially significant in light of the need for dispersal and recolonization of open habitat as the species recovers from declines that occurred before the cessation of fish stocking activity or in relation to the recent spread of Bd throughout the area. It is evident from the data that frogs can, over the course of a season (and certainly over a lifespan), move through several kilometers of habitat (if the intervening habitat is suitable).

Therefore, given observed dispersal ability from available data, we have determined as a general guideline that aquatic habitats associated with survey encounters (point estimates or the entirety of associated water bodies) and those within 3 km (1.9 mi) (approximating the upper bound of observed estimates of movement from all available data) along stream or meadow courses, and within 300 m (984 ft) overland (an intermediate value between the maximum observed distance traveled across dry land within a season) are included in the delineated habitat units, unless some other habitat parameter (as outlined in the PCEs above) indicates low habitat utility or practical dispersal barriers such as high ridges or rough terrain. At a minimum, stream courses and the adjacent upland habitat up to a distance of 25 m (82 ft) are included (based on an estimate from empirical data in Wengert (2008, p. 13)). A maximum value was utilized here because habitat along stream courses must protect all frogs physically present and includes key features of habitat quality (see PCEs above).

(3) Habitat Unit Delineation:

To identify areas containing the PCEs for mountain yellow-legged frogs that may require special management considerations or protection, we examined the current and historical locations of mountain yellow-legged frogs in relation to the State of California's CALWATER watershed classification system (version 2.2), using the smallest planning watersheds.

In order to circumscribe the boundaries of potential critical habitat, we adopted the CALWATER boundaries, where appropriate, and delineated boundaries based on currently occupied aquatic habitat, as well as historically occupied habitats within the current range of the species. Watershed boundaries or other topographic features were utilized as the boundary when they provided for the maintenance of the hydrology and water quality of the aquatic system. Additional areas were included in order to provide for the dispersal capacity of the frogs, as discussed above.

To further refine the boundaries, we obtained the MaxEnt 3.3.3e species distribution model covering both the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog (CDFG 2011, pp. A–1—A–5; Knapp, unpubl. data). This model utilizes 10 environmental variables that were selected based on known physiological tolerances of the mountain yellow-legged frog to temperature and water availability. The variables used as model inputs included elevation, maximum elevation of unit watershed, slope, average annual temperature, average temperature of coldest quarter of the year, average temperature of the warmest month of the year, annual precipitation, precipitation during the driest quarter of the year, distance to water, and lake density. The model additionally allows for interactions among these variables, and can fit nonlinear relationships using a diversity of feature classes (CDFG 2011, pp. A–1—A–5).

The MaxEnt model renders a grid output with likelihood of frog occurrence, a practical index of habitat quality. This output was compared to 2,847 frog occurrence records to determine the fit of the model. The model derived by Dr. Knapp fit the data well. Area under the curve (AUC) values are a measure of model fit, where values of 0.5 are random and values approaching 1.0 are fully accounted for within the model. The model fit for the MaxEnt 3.3.3e species distribution model covering both the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog had AUC values of 0.916 (standard deviation (s.d.) = 0.002) and 0.964 (s.d. = 0.006), respectively.

Individual critical habitat units were constructed to reflect the balance of frog dispersal ability and habitat use (in other words, based on movement distances), along with projections of habitat quality as expressed by the probability models (MaxEnt grid outputs) and other habitat parameters consistent with the PCEs defined above.

Specifically, we considered areas to be actively utilized if since 1995 frog survey records existed within 300 m (984 ft) overland, or within 3 km (1.9 mi) if connected by high-quality dispersal habitat (stream or high lake density habitat). In general, areas upgradient from occupied water bodies (within the catchment) were circumscribed at the watershed boundary. Aquatic habitat of high quality within 3 km (1.9 mi) from extant survey records was included, along with areas necessary to protect the relevant PCEs. We circumscribed all habitats with MaxEnt model output of 0.4 and greater within utilized watersheds, but also extended boundaries to include stream courses, ridges, or watershed boundaries where appropriate to protect the relevant PCEs. The threshold value of 0.4 was utilized as an index for establishing the historical range by Knapp, as it incorporated most historic and current frog locations (CDFG 2011, p. A–3). Using the available data (CDFG *et al.* unpub. data), this figure accounted for approximately 90 percent of extant population habitat association using our occurrence criteria (1,504 of 1,674 survey records).

Where the MaxEnt 3.3.3e species distribution model indicated poor quality of intervening habitat in the mapped landscape within 3 km (1.9 mi) of survey records, we generally cropped these areas at dispersal barriers or watershed boundaries, but may have also followed streams or topographic features. To minimize human error from visual interpolation of habitat units, we aggregated the high-quality habitat grids from the model output in ArcGIS using a neighbor distance within 1,000 m (3,281 ft), and we used this boundary to circumscribe model outputs when selecting this boundary parameter. The 1,000 m (3,281 ft) aggregating criterion most closely agreed with manual visual interpolation methods that minimized land area included during unit delineation.

If areas were contiguous to designated areas within utilized watersheds, we include the higher quality habitat of the adjacent watersheds with model ranking 0.4 or greater. These areas are essential if they are of sufficiently high habitat quality to be important for future dispersal, translocation, and restoration consistent with recovery needs. In general, for these "neighboring" watersheds, circumscribed habitat boundaries followed either the 0.4+ MaxEnt aggregate polygon boundary, stream courses, or topographic features that otherwise constituted natural dispersal barriers. Further, proposed unit designation does not include catchment areas necessary to protect relevant PCEs if the mapped area was greater than 3 km (1.9 mi) from a survey location. This lower protective standard was appropriate because these areas were beyond the outside bound of extant survey records, and our confidence that these areas are, or will be, utilized is lower.

We also used historical records in some instances to include proximate watersheds that may or may not be currently utilized within subareas of high habitat quality as an index of the utility of habitat essential to the conservation of the frogs. This methodology was adopted to compensate for any uncertainties in our underlying scientific and site-specific knowledge of ecological features that indicate habitat quality. Unless significant changes have occurred on the landscape, an unutilized site confirmed by surveys to have historically supported frog populations likely contains more of the PCEs relative to one that has no historical records.

Yosemite Toad

(1) Data Sources:

We obtained observational data from the following sources to include in our GIS database for the Yosemite toad: (a) Surveys of the National Parks within the range of the Yosemite toad, including information collected by R. Knapp and G. Fellers; (b) survey data from each of the National Forests within the range of the species; (c) CDFG Sierra Lakes Inventory Project survey data; and (d) SNAMPH survey data from the USFS. We cross-checked the data received from each of these sources with information contained in the CNDDB. Given that the data sources (a) through (d) are the result of systematic surveys, provide better survey coverage of the range of the Yosemite toad, and are based on observation data of personnel able to accurately identify the species, we opted to utilize the above sources in lieu of the CNDDB data.

(2) Occurrence Criteria:

We considered extant all localities where Yosemite toad has been detected since 2000. The 2000 date was used for several reasons: (1) Comprehensive surveys for Yosemite toad throughout its range were not conducted prior to 2000, so data prior to 2000 are limited; and (2) given the longevity of the species and the magnitude of threats, toad locations identified since 2000 are likely to contain extant populations.

We considered the occupied geographic range of the species to include all suitable habitats within dispersal distance and geographically contiguous to extant Yosemite toad populations. We delineated specific areas within the present range of the species that are known to be utilized as essential to the conservation of the species. To maintain genetic integrity and provide for sufficient range and distribution of the species, we identified areas with dense concentrations of Yosemite toad populations interconnected or interspersed among suitable breeding habitats and vegetation types, as well as populations on the edge of the range of the species. We also delineated specific areas to include dispersal and upland migration corridors.

Two movement studies using radiotelemetry have been completed for Yosemite toad from which migration distances may be derived. One study took place in the Highland Lakes on the Stanislaus National Forest (Martin 2008, pp. 98–113), and the other took place in the Bull Creek watershed on the Sierra National Forest (Liang 2010, p. 96). The maximum observed seasonal movement distances from breeding pools within the Highland Lakes area was 657 m (2,157 ft) (Martin 2008, p. 144), while the maximum at the Bull Creek watershed was 1,261 m (4,137 ft). Additionally, Liang *et al.* (2010, p. 6) utilized all available empirical data to derive a maximum movement distance estimate from breeding locations to be 1,500 m (4,920 ft), which they utilized in their modeling efforts. Despite these reported dispersal distances, the results may not necessarily apply across the range of the species. It is likely that movement is largely a function of the habitat types particular to each location.

We may use the mean plus 1.96 times the standard error as an expression of the 95 percent confidence interval (Streiner 1996, pp. 498–502; Curran-Everett 2008, pp. 203–208) to estimate species-level movement behavior from such studies. Using this measure, we derive a confidence-bounded estimate for average distance moved in a single season based on the Liang study (2010, pp. 107–109) of 1,015 m (3,330 ft). We focused on the Liang study because it had a much larger sample size and likely captured greater variability within a population. However, given that Liang *et al.* (2010, p. 6) estimated and applied a maximum movement distance of 1,500 m (4,920 ft), we opted to choose the approximate midpoint of these two methods, rounded to the nearest 0.25 km (0.16 mi) and determined 1,250 m (4,101 ft) to be an appropriate estimated dispersal distance from breeding locations. As was the case with the estimate chosen for the mountain yellow-legged frog complex, this distance does not represent the maximum possible dispersal distance, but represents a distance that will reflect the movement of a large majority of Yosemite toads.

Therefore, our criteria for identifying the boundaries of critical habitat units take into account dispersal behavior and distances, but also consider the underlying habitat quality and types, specifically the physical and biological features (and site-specific knowledge, where available), in defining boundaries for essential habitat.

(3) Habitat Unit Delineation:

To identify areas containing the PCEs for Yosemite toad that may require special management considerations or protection, we examined the current and historical locations of Yosemite toad in relation to the State of California vegetation layer, the USFS meadow information dataset, the State of California's CALWATER watershed classification system (version 2.2) using the smallest planning watersheds, and appropriate topographic maps.

In order to circumscribe the boundaries of potential critical habitat, we expanded the bounds of known breeding locations for Yosemite toad by the 1,250 m (4,101 ft) dispersal distance and delineated boundaries also taking into account vegetation types, meadow complexes, and dispersal barriers. Where appropriate, we utilized the CALWATER boundaries to reflect potential barriers to dispersal (high, steep ridges), and delineated boundaries based on currently utilized habitat. Watershed boundaries or other topographic features were marked as the unit boundary when it provided for the maintenance of the hydrology and water quality of the aquatic system.

In some instances (such as no obvious dispersal barrier or uncertainty regarding the suitability of habitat within dispersal distance of a known toad location), to further refine the boundaries, we obtained the MaxEnt 3.3.3e species habitat suitability/distribution model developed and utilized by Liang *et al.* (2010) and Liang and Stohlgren (2011), which covered the range of the Yosemite toad. This model utilized nine environmental and three anthropogenic data layers to provide a predictor of Yosemite toad locations that serves as a partial surrogate for habitat quality and therefore underlying physical or biological features or PCEs. The variables used as model inputs included slope, aspect, vegetation, bioclimate variables (including annual mean temperature, mean diurnal range, temperature seasonality, annual precipitation, precipitation of wettest month, and precipitation seasonality), distance to agriculture, distance to fire perimeter, and distance to timber activity.

As the model incorporated factors that did not directly correlate to the physical or biological features or PCEs (for example, distance to agriculture, distance to fire perimeter, and distance to timber activity) (Liang and Stohlgren 2011, p. 22)), further analysis was

required. In areas that were either occupied by Yosemite toad or within dispersal distance of the toad (but the model indicated a low probability of occurrence), we assessed the utility of the model by further estimating potential sources of model derivation (such as fire or anthropogenic factors). If habitat quality indicated by the MaxEnt model was biased based on factors other than those linked to physical or biological features or PCEs, we discounted the MaxEnt output in those areas and based our designation on the PCEs. In these cases, areas are included in our proposed critical habitat designation that ranked low in the MaxEnt output.

Individual proposed critical habitat units are constructed to reflect toad dispersal ability and habitat use, along with projections of habitat quality, as expressed by the probability models (MaxEnt grid outputs) and other habitat parameters consistent with the PCEs defined above.

We also used historical records as an index of the utility of habitat essential to the conservation of the Yosemite toad to help compensate for any uncertainties in our underlying scientific and site-specific knowledge of ecological features that indicate habitat quality, as we did for the frogs.

Proposed Critical Habitat Designation

Based on the above described criteria, we are proposing 447,341 ha (1,105,400 ac) as critical habitat for the Sierra Nevada yellow-legged frog (Table 1). This area represents approximately 14 percent of the historic range of the species as estimated by Knapp (unpublished data). All subunits proposed for designation as critical habitat are considered occupied (at the subunit level), and include lands within Lassen, Butte, Plumas, Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE SIERRA NEVADA YELLOW-LEGGED FROG

Subunit No.	Subunit name	Hectares (ha)	Acres (ac)
1A	Morris Lake	7,154	17,677
1B	Bucks Lake	14,224	35,148
1C	Deanes Valley	2,020	4,990
1D	Slate Creek	2,688	6,641
2A	Boulder/Lane Rock Creeks	4,500	11,119
2B	Gold Lake	6,354	15,702
2C	Black Buttes	55,961	138,283
2D	Five Lakes	3,758	9,286
2E	Crystal Range	33,666	83,191
2F	Squaw Ridge	44,047	108,842
2G	North Stanislaus	10,701	26,444
2H	Wells Peak	11,711	28,939
2I	Emigrant Yosemite	86,181	212,958
2J	Spiller Lake	1,094	2,704
2K	Virginia Canyon	891	2,203
2L	Register Creek	838	2,070
2M	Saddlebag Lake	8,596	21,242
2N	Unicorn Peak	2,088	5,160
3A	Yosemite Central	1,408	3,480
3B	Cathedral	38,892	96,104
3C	Inyo	3,090	7,636
3D	Mono Creek	18,504	45,723
3E	Evolution/Leconte	87,239	215,572
3F	Pothole Lakes	1,736	4,289
Total		447,341	1,105,400

We are proposing 89,637 ha (221,498 ac) as critical habitat for the northern DPS of the mountain yellow-legged frog (Table 2). This area represents approximately 9 percent of the historic range of the northern DPS of the mountain yellow-legged frog in the Sierra Nevada. All subunits proposed for designation as critical habitat are considered occupied (at the subunit level), and include lands within Fresno and Tulare, Counties, California.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE NORTHERN DPS OF THE MOUNTAIN YELLOW-LEGGED FROG

Subunit No. [1]	Subunit name	Hectares (ha)	Acres (ac)
4A	Frypan Meadows	1,585	3,917
4B	Granite Basin	1,777	4,391
4C	Sequoia Kings	67,566	166,958
4D	Kaweah River	3,663	9,052
5A	Blossom Lakes	2,069	5,113
5B	Coyote Creek	9,802	24,222
5C	Mulkey Meadows	3,175	
Total		89,637	221,498

[1] Subunit numbering begins at 4, following designation of southern DPS of the mountain yellow-legged frog (3 units).

We are proposing 303,889 ha (750,926 ac) as critical habitat for the Yosemite toad (Table 3). All units proposed for designation as critical habitat are considered occupied (at the unit level) and include lands within Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS FOR THE YOSEMITE TOAD

Unit No.	Unit name	Hectares (ha)	Acres (ac)
1	Blue Lakes/Mokelumne	14,884	36,778
2	Leavitt Lake/Emigrant	30,803	76,115
3	Rogers Meadow	11,797	29,150
4	Hoover Lakes	2,303	5,690
5	Tuolumne Meadows/Cathedral	56,530	139,688
6	McSwain Meadows	6,472	15,992
7	Porcupine Flat	1,701	4,204
8	Westfall Meadows	1,859	4,594
9	Triple Peak	4,377	10,816
10	Chilnualna	6,212	15,351
11	Iron Mountain	7,706	19,043
12	Silver Divide	39,987	98,809
13	Humphrys Basin/Seven Gables	20,666	51,067
14	Kaiser/Dusy	70,978	175,390
15	Upper Goddard Canyon	14,905	36,830
16	Round Corral Meadow	12,711	31,409
Total		303,889	750,926

Sierra Nevada Yellow-Legged Frog

We are proposing three units encompassing 24 subunits as critical habitat for the Sierra Nevada yellow-legged frog. The critical habitat units and subunits that we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Sierra Nevada yellow-legged frog. Units are numbered for the three major genetic clades (Vredenburg *et al.* 2007, p. 361) that have been identified rangewide for the Sierra Nevada yellow-legged frog. Distinct portions within each clade are designated as subunits. The 24 subunits we propose as critical habitat are listed in Table 4, and all subunits are known to be currently occupied based on the best available scientific and commercial information.

TABLE 4—CRITICAL HABITAT SUBUNITS FOR THE SIERRA NEVADA YELLOW-LEGGED FROG (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING

Critical habitat subunit	Federal ha (ac)	State/local [3] ha (ac)	Private ha (ac)	Total [1] ha (ac)	Known threats [2]
1A. Morris Lake	6,715 (16,593)	53 (131)	386 (953)	7,154 (17,677)	1, 2, 3, 4, 5
1B. Bucks Lake	13,138 (32,464)	0 (0)	1,086 (2,684)	14,224 (35,148)	1, 3, 4, 5
1C. Deanes Valley	1,962 (4,847)	0 (0)	58 (143)	2,020 (4,990)	3, 4, 5
1D. Slate Creek	2,259 (5,581)	0 (0)	429 (1,060)	2,688 (6,641)	3, 4, 5
2A. Boulder/Lane Rock Creeks	3,953 (9,767)	0 (0)	547 (1,352)	4,500 (11,119)	1, 2, 3, 4, 5
2B. Gold Lake	5,643 (13,945)	0 (0)	711 (1,758)	6,354 (15,702)	1, 3, 4, 5
2C. Black Buttes	32,745 (80,914)	0 (0)	23,216 (57,369)	55,961 (138,283)	1, 2, 3, 4, 5
2D. Five Lakes	2,396 (5,921)	0 (0)	1,362 (3,365)	3,758 (9,286)	1, 4, 5
2E. Crystal Range	31,521 (77,891)	0 (0)	2,145 (5,300)	33,666 (83,191)	1, 2, 3, 5
2F. Squaw Ridge	40,771 (100,746)	56 (138)	3,220 (7,958)	44,047 (108,842)	1, 2, 3, 4, 5
2G. North Stanislaus	10,685 (26,403)	0 (0)	16 (41)	10,701 (26,444)	1, 2, 3, 4, 5
2H. Wells Peak	11,650 (28,788)	0 (0)	61 (150)	11,711 (28,939)	1, 3, 4, 5
2I. Emigrant Yosemite	86,109 (212,780)	*50 (*124)	22 (54)	86,181 (212,958)	1, 3, 5
2J. Spiller Lake	1,094 (2,704)	0 (0)	0 (0)	1,094 (2,704)	5

TABLE 4—CRITICAL HABITAT SUBUNITS FOR THE SIERRA NEVADA YELLOW-LEGGED FROG (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING—Continued

Critical habitat subunit	Federal ha (ac)	State/local [3] ha (ac)	Private ha (ac)	Total [1] ha (ac)	Known threats [2]
2K. Virginia Canyon	891 (2,203)	0 (0)	0 (0)	891 (2,203)	5
2L. Register Creek	838 (2,070)	0 (0)	0 (0)	838 (2,070)	5
2M. Saddlebag Lake	8,547 (21,120)	0 (0)	49 (122)	8,596 (21,242)	1, 5
2N. Unicorn Peak	2,088 (5,160)	0 (0)	0 (0)	2,088 (5,160)	1, 4, 5
3A. Yosemite Central	1,408 (3,480)	0 (0)	0 (0)	1,408 (3,480)	5
3B. Cathedral	38,892 (96,104)	0 (0)	0 (0)	38,892 (96,104)	1, 3, 5
3C. Inyo	3,090 (7,636)	0 (0)	0 (0)	3,090 (7,636)	1, 5
3D. Mono Creek	18,504 (45,723)	0 (0)	0 (0)	18,504 (45,723)	1, 3, 5
3E. Evolution/Leconte	87,071 (215,156)	*81 (*200)	87 (215)	87,239 (215,572)	1, 3, 5
3F. Pothole Lakes	1,735 (4,286)	0 (0)	1 (2)	1,736 (4,289)	1, 5
Total	413,702 (1,022,279)	108 (267) *132 (*325)	33,398 (82,527)	447,341 (1,105,400)	

Note: Area sizes may not sum due to rounding.

[1] Area estimates in ha (ac) reflect the entire area within the proposed critical habitat unit boundaries. Area estimates are rounded to the nearest whole integer that is equal to or greater than 1.

[2] Codes of known threats that may require special management considerations or protection of the essential physical or biological features:

[3] Asterisks * signify local jurisdictional (County) lands and are presented for brevity in the same column with State jurisdiction lands.

1. Fish Persistence and Stocking
2. Water Diversions/Development
3. Grazing
4. Timber Harvest/Fuels Reduction
5. Recreation

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Sierra Nevada yellow-legged frog below. Each unit and subunit proposed as critical habitat for the Sierra Nevada yellow-legged frog contains aquatic habitat for breeding activities (PCE 1); aquatic habitat to provide for shelter, foraging, predator avoidance, and dispersal during non-breeding phases of their life history (PCE 2); upland areas for feeding and movement, and catchment areas to protect water supply and water quality (PCE 3); and is currently occupied by the species. Each unit and subunit contains the physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog, which may require special management considerations or protection (see the *Special Management Considerations or Protection* section of this proposed rule for a detailed discussion of the threats to Sierra Nevada yellow-legged frog habitat and potential management considerations).

Unit 1: Sierra Nevada Yellow-legged Frog Clade 1

Unit 1 is considered essential to the conservation of the Sierra Nevada yellow-legged frog because it represents the northernmost portion of the species' range. It reflects unique ecological features within the range of the species because it comprises populations that are stream-based. Unit 1, including all subunits, is an essential component of the entirety of this proposed critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 1 of the Sierra Nevada yellow-legged frog are at very low numbers and face significant threats from habitat fragmentation. Protection of these populations and the areas necessary for range expansion and recovery is central to the designation of the subunits that comprise Unit 1.

Subunit 1A: Morris Lake

The Morris Lake subunit consists of approximately 7,154 ha (17,677 ac), and is located in Plumas and Butte Counties, California, approximately 4 km (2.5 mi) northwest of Highway 70. Land ownership within this subunit consists of approximately 6,715 ha (16,593 ac) of Federal land, 53 ha (131 ac) of State land, and 386 ha (953 ac) of private land. The Morris Lake subunit includes lands in the Plumas and Lassen National Forests. The northwest arms of this subunit encompass Snag Lake and Philbrook Reservoir. This subunit is considered to be within the geographical area occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Morris Lake subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, grazing activity, timber

management and fuels reduction, and recreational activities.

Subunit 1B: Bucks Lake

The Bucks Lake subunit consists of approximately 14,224 ha (35,148 ac). It is located in Plumas County, California, approximately 3 km (1.9 mi) south of Highway 70 near the intersection with Caribou Road, and is bisected on the south end by the Oroville Highway. Land ownership within this subunit consists of approximately 13,138 ha (32,464 ac) of Federal land and 1,086 ha (2,684 ac) of private land. The Bucks Lake subunit is located entirely within the boundaries of the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Bucks Lake subunit may require special management considerations or protection due to the presence of introduced fishes, grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 1C: Deanes Valley

The Deanes Valley subunit consists of approximately 2,020 ha (4,990 ac) and is located in Plumas County, California, approximately 5.7 km (3.6 mi) south of Buck's Lake Road, 6.4 km (4 mi) east of Big Creek Road, 7.5 km (4.7 mi) west of Quincy-LaPorte Road, and 3.5 km (2.2 mi) north of the Middle Fork Feather River. Land ownership within this subunit consists of approximately 1,962 ha (4,847 ac) of Federal land and 58 ha (143 ac) of private land. The Deanes Valley subunit is located entirely within the boundaries of the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Deanes Valley subunit may require special management considerations or protection due to grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 1D: Slate Creek

The Slate Creek subunit consists of approximately 2,688 ha (6,641 ac), and is located in Plumas and Sierra Counties, California, approximately 0.7 km (0.4 mi) east of the town of LaPorte, and 2.5 km (1.6 mi) southwest of the west branch of Canyon Creek. Land ownership within this subunit consists of approximately 2,259 ha (5,581 ac) of Federal land and 429 ha (1,060 ac) of private land. The Slate Creek subunit is located entirely within the boundaries of the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Slate Creek subunit may require special management considerations or protection due to grazing activity, timber management and fuels reduction, and recreational activities.

Unit 2: Sierra Nevada Yellow-legged Frog Clade 2

This unit is considered essential to the conservation of the species because it represents a significant fraction of the Sierra Nevada yellow-legged frog range, and it reflects unique ecological features within the range by comprising populations that are both stream- and lake-based. Unit 2, including all subunits, is an essential component of the entirety of this proposed critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 2 of the Sierra Nevada yellow-legged frog distribution are at very low to intermediate abundance and face significant threats from habitat fragmentation resulting from the introduction of fish. Protection of these populations and the areas necessary to maintain the geographic extent of this clade across its range, including connectivity between extant populations and higher quality habitat, is central to the designation of the subunits that comprise Unit 2.

Subunit 2A: Boulder/Lane Rock Creeks

The Boulder/Lane Rock Creeks subunit consists of approximately 4,500 ha (11,119 ac), and is located in Plumas and Lassen Counties, California, between 8 km (5 mi) and 18 km (11.3 mi) west of Highway 395 near the county line along Wingfield Road. Land ownership within this subunit consists of approximately 3,953 ha (9,767 ac) of Federal land and 547 ha (1,352 ac) of private land. Subunit 2A includes Antelope Lake (which receives two creeks as its northwestern headwaters), and these water bodies provide connectivity for both main areas within the subunit. The Boulder/Lane Rock Creeks subunit is located entirely within the boundaries of the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological-features essential to the conservation of the Sierra Nevada yellow-legged frog in the Boulder/Lane Rock Creeks subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2B: Gold Lake

The Gold Lake subunit consists of approximately 6,354 ha (15,702 ac), and is located in Plumas and Sierra Counties, California, approximately 8.7 km (5.4 mi) south of Highway 70, and 4.4 km (2.75 mi) north of Highway 49, along Gold Lake Highway to the east. Land ownership within this subunit consists of approximately 5,643 ha (13,945 ac) of Federal land and 711 ha (1,758 ac) of private land. The Gold Lake Subunit is located within the Plumas and Tahoe National Forests. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Gold Lake subunit may require special management considerations or protection due to introduced fishes, grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2C: Black Buttes

The Black Buttes subunit consists of approximately 55,961 ha (138,283 ac), and spans from Sierra County through

Nevada County into Placer County, California. It is 8.5 km (5.3 mi) west of Highway 89, 3.7 km (2.3 mi) north of the North Fork American River, and is bisected on the south by Interstate 80. Land ownership within this subunit consists of approximately 32,745 ha (80,914 ac) of Federal land and 23,216 ha (57,369 ac) of private land. The Black Buttes subunit is located entirely within the boundaries of the Tahoe National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Black Buttes subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2D: Five Lakes

The Five Lakes subunit consists of approximately 3,758 ha (9,286 ac), and is located in the eastern portion of Placer County, California, approximately 2 km (1.25 mi) west of Highway 89 and 12.3 km (7.7 mi) east of Foresthill Road. Land ownership within this subunit consists of approximately 2,396 ha (5,921 ac) of Federal land and 1,362 ha (3,365 ac) of private land. The Five Lakes subunit is located entirely within the boundaries of the Tahoe National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Five Lakes subunit may require special management considerations or protection due to the presence of introduced fishes, timber management and fuels reduction, and recreational activities.

Subunit 2E: Crystal Range

The Crystal Range subunit consists of approximately 33,666 ha (83,191 ac), and is located primarily in El Dorado and Placer Counties, California, approximately 3.8 km (2.4 mi) west of Highway 89, bounded on the south by Interstate 50, and 7 km (4.4 mi) east of Ice House Road. The Crystal Range subunit includes portions of the Desolation Wilderness. Land ownership within this subunit consists of approximately 31,521 ha (77,891 ac) of Federal land and 2,145 ha (5,300 ac) of private land. The Crystal Range subunit includes areas within the Eldorado and Tahoe National Forests and also the Lake Tahoe Basin Management Unit. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Crystal Range subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, grazing activity, and recreational activities.

Subunit 2F: Squaw Ridge

The Squaw Ridge subunit consists of approximately 44,047 ha (108,842 ac), and is located in Amador, Alpine, and El Dorado Counties, California. The Squaw Ridge subunit is roughly bounded on the northwest by Highway 88, and on the southeast by Highway 4. Land ownership within this subunit consists of approximately 40,771 ha (100,746 ac) of Federal land, 56 ha (138 ac) of State land, and 3,220 ha (7,958 ac) of private land. The Squaw Ridge subunit includes areas within the Eldorado, Stanislaus, and Humboldt-Toiyabe National Forests. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Squaw Ridge Subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2G: North Stanislaus

The North Stanislaus subunit consists of approximately 10,701 ha (26,444 ac), and is located in Alpine, Tuolumne, and Calaveras Counties, California. It is south of the North Fork Mokelumne River, and is bisected by Highway 4, which traverses the unit from southwest to northeast. Land ownership within this subunit consists of approximately 10,685 ha (26,403 ac) of Federal land and 16 ha (41 ac) of private land. The North Stanislaus subunit is located entirely within the boundaries of the Stanislaus National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species (under section, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the North Stanislaus Subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2H: Wells Peak

The Wells Peak subunit consists of approximately 11,711 ha (28,939 ac), and is located in Alpine, Mono, and Tuolumne Counties, California, approximately 6.4 km (4 mi) west of Highway 395, and bounded by Highway 108 on the south. Land ownership within this subunit consists of approximately 11,650 ha (28,788 ac) of Federal land and 61 ha (150 ac) of private land. Federal holdings within the Wells Peak subunit are within the Stanislaus National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Wells Peak subunit may require special management considerations or protection due to introduced fishes, grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2I: Emigrant Yosemite

The Emigrant Yosemite subunit consists of approximately 86,181 ha (212,958 ac), and is located in Tuolumne and Mono Counties, California, approximately 11 km (6.9 mi) south of Highway 108 and 7.4 km (4.6 mi) north of Hetch Hetchy Reservoir. The Emigrant Yosemite subunit encompasses the Emigrant Wilderness. Land ownership within this subunit consists of approximately 86,109 ha (212,780 ac) of Federal land, 50 ha (124 ac) of local jurisdiction lands, and 22 ha (54 ac) of private land. The Emigrant Yosemite subunit is predominantly in Yosemite National Park and the Stanislaus National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Emigrant Yosemite subunit may require special management considerations or protection due to the presence of introduced fishes, grazing activity, and recreational activities.

Subunit 2J: Spiller Lake

The Spiller Lake subunit consists of approximately 1,094 ha (2,704 ac), and is located in Tuolumne County, California, approximately 1.2 km (0.75 mi) west of Summit Lake. The Spiller Lake subunit consists entirely of Federal land, all located within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Spiller Lake subunit may require special management considerations or protection due to recreational activities.

Subunit 2K: Virginia Canyon

The Virginia Canyon subunit consists of approximately 891 ha (2,203 ac), and is located in Tuolumne County, California, approximately 4.3 km (2.7 mi) southwest of Spiller Lake, and roughly bounded on the east by Return Creek. The Virginia Canyon subunit consists entirely of Federal land, all located within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Virginia Canyon subunit may require special management considerations or protection due to recreational activities.

Subunit 2L: Register Creek

The Register Creek subunit consists of approximately 838 ha (2,070 ac), and is located in Tuolumne County, California, approximately 1.2 km (0.75 mi) west of Regulation Creek, with Register Creek intersecting the subunit on the southwest end and running along the eastern portion to the north. The Register Creek subunit consists entirely of Federal land, all located within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Register Creek subunit may require special management considerations or protection due to recreational activities.

Subunit 2M: Saddlebag Lake

The Saddlebag Lake subunit consists of approximately 8,596 ha (21,242 ac), and is located in Tuolumne and Mono Counties, California, approximately 12.4 km (7.75 mi) west of Highway 395, and intersected on the southeast boundary by Tioga Pass Road (Highway 120). Land ownership within this subunit consists of approximately 8,547 ha (21,120 ac) of Federal land and 49 ha (122 ac) of private land. The Saddlebag Lake subunit is predominantly located within Yosemite National Park and the Inyo National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Saddlebag Lake subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Subunit 2N: Unicorn Peak

The Unicorn Peak subunit consists of approximately 2,088 ha (5,160 ac), and is located in Tuolumne County, California, intersected from east to west on its northern boundary by Tioga Pass Road (Highway 120). The Unicorn Peak subunit consists entirely of Federal land, all within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Unicorn Peak subunit may require special management considerations or protection due to the presence of introduced fishes, timber management and fuels reduction, and recreational activities.

Unit 3: Sierra Nevada Yellow-Legged Frog Clade 3

This unit is considered essential to the conservation of the Sierra Nevada yellow-legged frog because it represents a significant portion of the species' range, and it reflects a core conservation area comprising the most robust remaining populations at higher densities (closer proximity) across the species' range. Unit 3, including all subunits, is an essential component of the entirety of this proposed critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 3 of the Sierra Nevada yellow-legged frog distribution face significant threats from habitat fragmentation. Protection of these populations and the areas necessary to maintain the geographic extent of this clade across its range is central to the designation of the subunits that comprise Unit 3.

Subunit 3A: Yosemite Central

The Yosemite Central subunit consists of approximately 1,408 ha (3,480 ac), and is located in Mariposa County,

California, approximately 4 km (2.5 mi) northwest of Tioga Pass Road (Highway 120) in the heart of Yosemite National Park. The Yosemite Central subunit consists entirely of Federal lands within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Yosemite Central subunit may require special management considerations or protection due to recreational activities.

Subunit 3B: Cathedral

The Cathedral subunit consists of approximately 38,892 ha (96,104 ac), and is located in Mariposa, Madera, Mono, and Tuolumne Counties, California, approximately 15.6 km (9.75 mi) west of Highway 395 and 9.4 km (5.9 mi) south of Highway 120. The Cathedral subunit consists entirely of Federal land, including lands in Yosemite National Park and the Inyo and Sierra National Forests. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Cathedral subunit may require special management considerations or protection due to the presence of introduced fishes, grazing activity, and recreational activities.

Subunit 3C: Inyo

The Inyo subunit consists of approximately 3,090 ha (7,636 ac), and is located in Madera County, California, approximately 5.4 km (3.4 mi) southwest of Highway 203. The Inyo subunit consists entirely of Federal land located within the Inyo National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Inyo subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Subunit 3D: Mono Creek

The Mono Creek subunit consists of approximately 18,504 ha (45,723 ac), and is located in Fresno and Inyo Counties, California, approximately 16 km (10 mi) southwest of Highway 395. The Mono Creek subunit consists entirely of Federal land located within the Sierra and Inyo National Forests. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Mono Creek subunit may require special management considerations or protection due to the presence of introduced fishes, grazing activity, and recreational activities.

Subunit 3E: Evolution/Leconte

The Evolution/Leconte subunit consists of approximately 87,239 ha (215,572 ac), and is located in Fresno and Inyo Counties, California, approximately 12.5 km (7.8 mi) southwest of Highway 395. Land ownership within this subunit consists of approximately 87,071 ha (215,156 ac) of Federal land, 81 ha (200 ac) of local jurisdictional lands, and 87 ha (215 ac) of private land. The Evolution/Leconte subunit is predominantly within the Sierra and Inyo National Forests and Kings Canyon National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Evolution/Leconte subunit may require special management considerations or protection due to the presence of introduced fishes, grazing activity, and recreational activities.

Subunit 3F: Pothole Lakes

The Pothole Lakes subunit consists of approximately 1,736 ha (4,289 ac), and is located in Inyo County, California, approximately 13.1 km (8.2 mi) west of Highway 395. Land ownership within this subunit consists of approximately 1,735 ha (4,286 ac) of Federal land and 1 ha (2 ac) of private land. The Pothole Lakes subunit is almost entirely located within the Inyo National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Pothole Lakes subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Northern DPS of the Mountain Yellow-Legged Frog

We are proposing seven subunits as critical habitat for the northern DPS of the mountain yellow-legged frog. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the northern DPS of the mountain yellow-legged frog. Units are named after the major genetic clades (Vredenburg *et al.* 2007, p. 361), of which three exist rangewide for the mountain yellow-legged frog, and two are within the northern DPS of the mountain yellow-legged frog in the Sierra Nevada. Distinct units within each clade are designated as subunits. Unit designations begin numbering sequentially, following the three units already designated on September 14, 2006, for the southern DPS of the mountain yellow-legged frog (71 FR 54344). The seven subunits we propose as critical habitat are listed in Table 5 and are, based on the best available scientific and commercial information, currently occupied.

TABLE 5—CRITICAL HABITAT UNITS FOR THE NORTHERN DPS OF THE MOUNTAIN YELLOW-LEGGED FROG (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES FOR UNITS WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING

Critical habitat unit	Federal ha (ac)	Private ha (ac)	Total [1] ha (ac)	Known threats [2]
4A. Frypan Meadows	1,585 (3,917)	0 (0)	1,585 (3,917)	5
4B. Granite Basin	1,777 (4,391)	0 (0)	1,777 (4,391)	5
4C. Sequoia Kings	67,566 (166,958)	0 (0)	67,566 (166,958)	1, 5
4D. Kaweah River	3,663 (9,052)	0 (0)	3,663 (9,052)	5
5A. Blossom Lakes	2,069 (5,113)	0 (0)	2,069 (5,113)	5
5B. Coyote Creek	9,792 (24,197)	10 (24)	9,802 (24,222)	1, 5
5C. Mulkey Meadows	3,175 (7,846)	0 (0)	3,175 (7,846)	1, 3, 5
Total	89,627 (221,474)	10 (24)	89,637 (221,498)	

Note: Area sizes may not sum due to rounding.

[1] Area estimates in ha (ac) reflect the entire area within the proposed critical habitat unit boundaries. Area estimates are rounded to the nearest whole integer that is equal to or greater than 1.

[2] Codes of known threats that may require special management considerations or protection of the essential physical or biological features:
1. Fish Persistence and Stocking
2. Water Diversions/Development
3. Grazing
4. Timber Harvest/Fuels Reduction
5. Recreation

We present brief descriptions of all subunits and reasons why they meet the definition of critical habitat for the northern DPS of the mountain yellow-legged frog below. Each unit and subunit proposed as critical habitat for the northern DPS of the mountain yellow-legged frog contains aquatic habitat for breeding activities (PCE 1); aquatic habitat to provide for shelter, foraging, predator avoidance, and dispersal during nonbreeding phases within their life history (PCE 2); upland areas for feeding and movement, and catchment areas to protect water supply and water quality (PCE 3); and is currently occupied by the species. Each unit and subunit contains the physical and biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog, which may require special management (see the *Special Management Considerations or Protection* section of this proposed rule for a detailed discussion of the threats to Sierra Nevada yellow-legged frog habitat and potential management considerations).

Unit 4: Northern DPS of the Mountain Yellow-Legged Frog Clade 4

This unit is considered essential to the conservation of the species because it represents a significant portion of the northern DPS of the mountain yellow-legged frog range, and reflects a core conservation area comprising the most robust remaining populations at higher densities (closer proximity) across the species' range. Unit 4, including all subunits, is an essential component to the entirety of this proposed critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 4 of the northern DPS of the mountain yellow-legged frog distribution face significant threats from habitat fragmentation. Protection of these populations and the areas necessary to maintain the geographic extent of this clade across its range is central to the designation of the subunits that comprise Unit 4. In addition, Clade 4 includes the only remaining basins with high-density, lake-based populations that are not infected with Bd, and chytrid epidemics will likely decimate these uninfected populations in the near future unless habitat protections and special management considerations are implemented. It is necessary to broadly protect remnant populations across the range of Clade 4 to facilitate species persistence in suitable habitat.

Subunit 4A: Frypan Meadows

The Frypan Meadows subunit consists of approximately 1,585 ha (3,917 ac), and is located in Fresno County, California, approximately 4.3 km (2.7 mi) northwest of Highway 180. The Frypan Meadows subunit consists entirely of Federal land, located entirely within the boundaries of the Kings Canyon National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Frypan Meadows subunit may require special management considerations or protection due to recreational activities.

Subunit 4B: Granite Basin

The Granite Basin subunit consists of approximately 1,777 ha (4,391 ac), and is located in Fresno County, California, approximately 3.2 km (2 mi) north of Highway 180. The Granite Basin subunit consists entirely of Federal land, located within the boundaries of the Kings Canyon National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed

to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Granite Basin subunit may require special management considerations or protection due to recreational activities.

Subunit 4C: Sequoia Kings

The Sequoia Kings subunit consists of approximately 67,566 ha (166,958 ac), and is located in Fresno and Tulare Counties, California, approximately 18 km (11.25 mi) west of Highway 395 and 4.4 km (2.75 mi) southeast of Highway 180. The Sequoia Kings subunit consists entirely of Federal land, all within Sequoia and Kings Canyon National Parks. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical and biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Sequoia Kings subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Subunit 4D: Kaweah River

The Kaweah River subunit consists of approximately 3,663 ha (9,052 ac), and is located in Tulare County, California, approximately 2.8 km (1.75 mi) east of Highway 198. The Kaweah River subunit consists entirely of Federal land, all within Sequoia National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Kaweah River subunit may require special management considerations or protection due to recreational activities.

Unit 5: Northern DPS of the Mountain Yellow-Legged Frog Clade 5

This unit is considered essential to the conservation of the northern DPS of the mountain yellow-legged frog since it represents the southern portion of the species' range, and reflects unique ecological features within the range of the species because it comprises populations that are stream-based. Unit 5, including all subunits, is an essential component of the entirety of this proposed critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 5 of the northern DPS of the mountain yellow-legged frog distribution are at very low numbers, and face significant threats from habitat fragmentation. Protection of these populations and areas necessary for range expansion and recovery is central to the designation of the subunits that comprise Unit 5.

Subunit 5A: Blossom Lakes

The Blossom Lakes subunit consists of approximately 2,069 ha (5,113 ac), and is located in Tulare County, California, approximately 0.8 km (0.5 mi) northwest of Silver Lake. The Blossom Lakes subunit consists entirely of Federal land, located within Sequoia National Park and Sequoia National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Blossom Lakes subunit may require special management considerations or protection due to recreational activities.

Subunit 5B: Coyote Creek

The Coyote Creek subunit consists of approximately 9,802 ha (24,222 ac), and is located in Tulare County, California, approximately 7.5 km (4.7 mi) south of Moraine Lake. Land ownership within this subunit consists of approximately 9,792 ha (24,197 ac) of Federal land and 10 ha (24 ac) of private land. The Coyote Creek subunit is predominantly within Sequoia National Park and Sequoia and Inyo National Forests. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Coyote Creek subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Subunit 5C: Mulkey Meadows

The Mulkey Meadows subunit consists of approximately 3,175 ha (7,846 ac), and is located in Tulare County, California, approximately 10 km (6.25 mi) west of Highway 395. The Mulkey Meadows subunit consists entirely of Federal land, all within the Inyo National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to protect core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Mulkey Meadows subunit may require special management considerations or protection due to the presence of introduced fishes, grazing activity, and recreational activities.

Yosemite Toad

We are proposing 16 units as critical habitat for the Yosemite toad. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Yosemite toad. The 16 units we propose as critical habitat are listed in Table 6, and all 16 units are currently occupied.

TABLE 6—CRITICAL HABITAT UNITS PROPOSED FOR THE YOSEMITE TOAD (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES FOR UNITS WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING

Critical habitat unit	Federal ha (ac)	Private ha (ac)	Total [1] ha (ac)	Known threats [2]
1. Blue Lakes/Mokelumne	13,896 (34,338)	987 (2,440)	14,884 (36,778)	2, 4
2. Leavitt Lake/Emigrant	30,789 (76,081)	13 (33)	30,803 (76,115)	2, 4
3. Rogers Meadow	11,797 (29,150)	0 (0)	11,797 (29,150)	[3]N/A
4. Hoover Lakes	2,303 (5,690)	0 (0)	2,303 (5,690)	4
5. Tuolumne Meadows/Cathedral	56,477 (139,557)	53 (131)	56,530 (139,688)	4
6. McSwain Meadows	6,472 (15,992)	0 (0)	6,472 (15,992)	4
7. Porcupine Flat	1,701 (4,204)	0 (0)	1,701 (4,204)	4
8. Westfall Meadows	1,859 (4,594)	0 (0)	1,859 (4,594)	4
9. Triple Peak	4,377 (10,816)	0 (0)	4,377 (10,816)	4
10. Chilnualna	6,212 (15,351)	0 (0)	6,212 (15,351)	4
11. Iron Mountain	7,404 (18,296)	302 (747)	7,706 (19,043)	2, 3, 4
12. Silver Divide	39,986 (98,807)	1 (2)	39,987 (98,809)	2, 4
13. Humphrys Basin/Seven Gables	20,658 (51,046)	8 (21)	20,666 (51,067)	3, 4
14. Kaiser/Dusy	70,670 (174,629)	308 (761)	70,978 (175,390)	2, 3, 4
15. Upper Goddard Canyon	14,905 (36,830)	0 (0)	14,905 (36,830)	[3]N/A
16. Round Corral Meadow	12,613 (31,168)	97 (241)	12,711 (31,409)	2, 4
Total	302,188 (746,551)	1,771 (4,376)	303,889 (750,926)	

Note: Area sizes may not sum due to rounding.

[1]Area estimates in ha (ac) reflect the entire area within the proposed critical habitat unit boundaries. Area estimates are rounded to the nearest whole integer that is equal to or greater than 1.

[2]Codes of known threats that may require special management considerations or protection of the essential physical or biological features:
1. Water Diversions
2. Grazing
3. Timber Harvest/Fuels Reduction
4. Recreation

[3]Indicates no manageable threats (disease, predation, and climate change are not included in this table).

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Yosemite toad below. Each unit proposed as critical habitat for the Yosemite toad contains aquatic habitat for breeding activities (PCE 1) and upland habitat for foraging, dispersal, and overwintering activities (PCE 2), and is currently occupied by the species. Each unit contains the physical and biological features essential to the conservation of the Yosemite toad, which may require special management (see the *Special Management Considerations or Protection* section of this proposed rule for a detailed discussion of the threats to Yosemite toad habitat and potential management considerations).

Unit 1: Blue Lakes/Mokelumne

This unit consists of approximately 14,884 ha (36,778 ac), and is located in Alpine County, California, north and south of Highway 4. Land ownership within this unit consists of approximately 13,896 ha (34,338 ac) of Federal land and 987 ha (2,440 ac) of private land. The Blue Lakes/Mokelumne unit is predominantly within the Eldorado, Humboldt-Toiyabe, and Stanislaus National Forests. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it represents the northernmost portion of the Yosemite toad range and constitutes an area of high genetic diversity. The Blue Lakes/Mokelumne unit is an essential component of the entirety of this proposed critical habitat designation due to the genetic and distributional area this unit encompasses.

The physical or biological features essential to the conservation of the Yosemite toad in the Blue Lakes/Mokelumne unit may require special management considerations or protection due to grazing and recreational activities.

Unit 2: Leavitt Lake/Emigrant

This unit consists of approximately 30,803 ha (76,115 ac), and is located near the border of Alpine, Tuolumne, and Mono Counties, California, predominantly south of Highway 108. Land ownership within this unit

consists of approximately 30,789 ha (76,081 ac) of Federal land and 13 ha (33 ac) of private land. The Leavitt Lake/Emigrant unit is predominantly within the Stanislaus and Humboldt-Toiyabe National Forests and Yosemite National Park. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Leavitt Lake/Emigrant unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as providing for a variety of habitat types necessary to sustain Yosemite toad populations under a variety of climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Leavitt Lake/Emigrant unit may require special management considerations or protection due to grazing and recreational activities.

Unit 3: Rogers Meadow

This unit consists of approximately 11,797 ha (29,150 ac) of Federal land located entirely within Humboldt-Toiyabe National Forest and Yosemite National Park. The Rogers Meadow unit is located along the border of Tuolumne and Mono Counties, California, north of Highway 120. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations, is located in a relatively pristine ecological setting, and represents a variety of habitat types utilized by the species. The Rogers Meadow unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units as well as providing for a variety of habitat types necessary to sustain Yosemite toad populations under various climate regimes. This unit has no manageable threats (note that disease, predation, and climate change are not considered manageable threats).

Unit 4: Hoover Lakes

This unit consists of approximately 2,303 ha (5,690 ac) of Federal land located entirely within the Inyo and Humboldt-Toiyabe National Forests and Yosemite National Park. The Hoover Lakes unit is located along the border of Mono and Tuolumne Counties, California, east of Highway 395. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains Yosemite toad populations with a high degree of genetic variability east of the Sierra crest within the central portion of the species' range. This unit contains habitats that are essential to the Yosemite toad facing an uncertain climate future. The Hoover Lakes unit is an essential component of the entirety of this proposed critical habitat designation because it provides a continuity of habitat between adjacent units, provides for the maintenance of genetic variation, and provides habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of Yosemite toad in the Hoover Lakes unit may require special management considerations or protection due to recreational activities.

Unit 5: Tuolumne Meadows/Cathedral

This unit consists of approximately 56,530 ha (139,688 ac), and is located within Tuolumne, Mono, Mariposa, and Madera Counties, California, both north and south of Highway 120. Land ownership within this unit consists of approximately 56,477 ha (139,557 ac) of Federal land and 53 ha (131 ac) of private land. The Tuolumne Meadows/Cathedral unit is predominantly within the Inyo National Forest and Yosemite National Park. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, has high genetic variability, and, due to the long-term occupancy of this unit, is considered an essential locality for Yosemite toad populations. The Tuolumne Meadows/Cathedral unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as providing for a variety of habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Tuolumne Meadows/Cathedral unit may require special management considerations or protection due to recreational activities.

Unit 6: McSwain Meadows

This unit consists of approximately 6,472 ha (15,992 ac) of Federal land located entirely within Yosemite National Park. The McSwain Meadows unit is located along the border of Tuolumne and Mariposa Counties, California, north and south of Highway 120 in the vicinity of Yosemite Creek. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains Yosemite toad populations located at the western edge of the range of the species within the central region of its geographic distribution. This area contains a concentration of Yosemite toad localities, as well as representing a wide variety of habitat types utilized by the species. This unit contains habitats that are essential to the Yosemite toad facing an uncertain climate future. The McSwain Meadows unit is an essential component of the entirety of this proposed critical habitat designation because it provides a unique geographic distribution and variation in habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of Yosemite toad in the McSwain Meadows unit may require special management considerations or protection due to recreational activities.

Unit 7: Porcupine Flat

This unit consists of approximately 1,701 ha (4,204 ac) of Federal land located entirely within Yosemite National Park. The Porcupine Flat unit is located within Mariposa County, California, north and south of Highway 120 and east of Yosemite Creek. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a concentration of Yosemite toad localities in proximity to the western edge of the species' range within the central region of its geographic distribution, and provides a wide variety of habitat types utilized by the species. The Porcupine Flat unit is an essential component of the entirety of this proposed critical habitat designation due to its proximity to Unit 6, which allows Unit 7 to provide continuity of habitat between Units 5

and 6, and its geographic distribution and variation in habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Porcupine Flat unit may require special management considerations or protection due to recreational activities.

Unit 8: Westfall Meadows

This unit consists of approximately 1,859 ha (4,594 ac) of Federal land located entirely within Yosemite National Park. The Westfall Meadows unit is located within Mariposa County, California, along Glacier Point Road. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. The Westfall Meadows unit is considered essential to the conservation of the species because it contains Yosemite toad populations located at the western edge of the species' range within the central region of its geographic distribution, and south of the Merced River. Given that the Merced River acts as a dispersal barrier in this portion of Yosemite National Park, it is unlikely that there is genetic exchange between Unit 8 and Unit 6; thus Unit 8 represents an important geographic and genetic distribution of the species essential to conservation. This unit contains habitats essential to the conservation of the Yosemite toad facing an uncertain climate future. Unit 8 is an essential component of the entirety of this proposed critical habitat designation because it provides a unique geographic distribution and variation in habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Westfall Meadows unit may require special management considerations or protection due to recreational activities.

Unit 9: Triple Peak

This unit consists of approximately 4,377 ha (10,816 ac) of Federal land located entirely within the Sierra National Forest and Yosemite National Park. The Triple Peak unit is located within Madera County, California, between the Merced River and the South Fork Merced River. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Triple Peak unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, specifically east-west connectivity, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Triple Peak unit may require special management considerations or protection due to recreational activities.

Unit 10: Chilnualna

This unit consists of approximately 6,212 ha (15,351 ac) of Federal land located entirely within Yosemite National Park. The Chilnualna unit is located within Mariposa and Madera Counties, California, north of the South Fork Merced River. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Chilnualna Unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Chilnualna unit may require special management considerations or protection due to recreational activities.

Unit 11: Iron Mountain

This unit consists of approximately 7,706 ha (19,043 ac), and is located within Madera County, California, south of the South Fork Merced River. Land ownership within this unit consists of approximately 7,404 ha (18,296 ac) of Federal land and 302 ha (747 ac) of private land. The Iron Mountain unit is predominantly within the Sierra National Forest and Yosemite National Park. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. This unit further contains the southernmost habitat within the central portion of the range of the Yosemite toad. The Iron Mountain unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of Yosemite toad in the Iron Mountain unit may require special management considerations or protection due to grazing, timber harvest and fuels reduction, and recreational activities.

Unit 12: Silver Divide

This unit consists of approximately 39,987 ha (98,809 ac), and is located within Fresno, Inyo, Madera, and Mono Counties, California, southeast of the Middle Fork San Joaquin River. Land ownership within this unit consists of approximately 39,986 ha (98,807 ac) of Federal land and 1 ha (2 ac) of private land. The Silver Divide unit is predominantly within the Inyo and Sierra National Forests. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Silver Divide unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical and biological features essential to the conservation of the Yosemite toad in the Silver Divide unit may require special management considerations or protection due to grazing and recreational activities.

Unit 13: Humphrys Basin/Seven Gables

This unit consists of approximately 20,666 ha (51,067 ac), and is located within Fresno and Inyo Counties, California, northeast of the South Fork San Joaquin River. Land ownership within this unit consists of approximately 20,658 ha (51,046 ac) of Federal land and 8 ha (21 ac) of private land. The Humphrys Basin/Seven Gables unit is predominantly within the Inyo and Sierra National Forests. This unit is currently occupied and contains the physical or biological features essential to the conservation of the

species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Humphrys Basin/Seven Gables unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Humphrys Basin/Seven Gables unit may require special management considerations or protection due to recreation and timber harvest/fuels reduction activities.

Unit 14: Kaiser/Dusy

This unit consists of approximately 70,978 ha (175,390 ac), and is located in Fresno County, California, between the south fork of the San Joaquin River and the north fork of the Kings River. Land ownership within this unit consists of approximately 70,670 ha (174,629 ac) of Federal land and 308 ha (761 ac) of private land. The Kaiser/Dusy unit is predominantly within the Sierra National Forest. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, and is located at the represents southwestern extent of the Yosemite toad range. The Kaiser/Dusy unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Kaiser/Dusy unit may require special management considerations or protection due to grazing, timber harvest and fuels reduction, and recreational activities.

Unit 15: Upper Goddard Canyon

This unit consists of approximately 14,905 ha (36,830 ac) of Federal land located entirely within Kings Canyon National Park and the Sierra National Forest. The Upper Goddard Canyon unit is located within Fresno and Inyo Counties, California, at the upper reach of the South Fork San Joaquin River. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, and is located at the easternmost extent within the southern portion of the Yosemite toad's range. The Upper Goddard Canyon unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes. This unit has no manageable threats (note that disease, predation, and climate change are not considered manageable threats).

Unit 16: Round Corral Meadow

This unit consists of approximately 12,711 ha (31,409 ac), and is located in Fresno County, California, south of the North Fork Kings River. Land ownership within this unit consists of approximately 12,613 ha (31,168 ac) of Federal land and 97 ha (241 ac) of private land. The Round Corral Meadow unit is predominantly within the Sierra National Forest. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, and encompasses the southernmost portion of the range of the species. The Round Corral Meadow unit is an essential component of the entirety of this proposed critical habitat designation because it provides continuity of habitat between adjacent units, represents the southernmost portion of the range, and provides habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Round Corral Meadow unit may require special management considerations or protection due to grazing and recreational activities.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or

adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of listed species and/or resulting in the destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the functionality of an individual critical habitat unit or subunit, thereby appreciably reducing the suitability of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad to provide for the conservation of these species. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Sierra Nevada yellow-legged frog and northern DPS mountain yellow-legged frog. These activities include, but are not limited to:

(1) Actions that significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into surface water or into connected ground water at a point source or by dispersed release (non-point source). These activities may alter water conditions beyond the tolerances of the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog and result in direct or cumulative adverse effects to individuals and their life cycles.

(2) Actions that would significantly increase sediment deposition within the stream channel, lake, or other aquatic feature, or disturb riparian foraging and dispersal habitat. Such activities could include, but are not limited to, excessive sedimentation from livestock overgrazing, road construction, channel alteration, timber harvest, unauthorized off-road vehicle or recreational use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog by increasing the sediment deposition to levels that would adversely affect a frog's ability to complete its life cycle.

(3) Actions that would significantly alter channel or lake morphology, geometry, or water availability. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, development, mining, dredging, destruction of riparian vegetation, water diversion, water withdrawal, and hydropower generation. These activities may lead to changes to the hydrologic function of the channel or lake, and alter the timing, duration, waterflows, and levels that would degrade or eliminate mountain yellow-legged frog habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog.

(4) Actions that significantly reduce or limit the availability of breeding or overwintering aquatic habitat for the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog. Such activities could include, but are not limited to, stocking of introduced fishes, water diversion, water withdrawal, and hydropower generation. These actions could lead to the reduction in available breeding and overwintering habitat for the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog through reduction in water depth necessary for the frog to complete its life cycle. Additionally, the stocking of introduced fishes could prevent or preclude recolonization of otherwise available breeding or overwintering habitats, which is necessary for range expansion and recovery of Sierra Nevada yellow-legged frog and northern DPS of the mountain yellow-legged frog metapopulations.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Yosemite toad. These activities include, but are not limited to:

(1) Actions that significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or into connected ground water at a point source or by dispersed release (non-point source). These activities could alter water conditions beyond the tolerances of the Yosemite toad and result in direct or cumulative adverse effects to these individuals and their life cycles.

(2) Actions that would significantly increase sediment deposition within the wet meadow systems and other aquatic features utilized by Yosemite toad or disturb upland foraging and dispersal habitat. Such activities could include, but are not limited to, excessive sedimentation from livestock overgrazing, road construction, inappropriate fuels management activities, channel alteration, inappropriate timber harvest activities, unauthorized off-road vehicle or recreational use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and

reproduction of the Yosemite toad by increasing the sediment deposition to levels that would adversely affect a toad's ability to complete its life cycle.

(3) Actions that would significantly alter wet meadow or pond morphology, geometry, or inundation period. Such activities could include, but are not limited to, livestock overgrazing, channelization, impoundment, road and bridge construction, mining, dredging, and inappropriate vegetation management. These activities may lead to changes in the hydrologic function of the wet meadow or pond and alter the timing, duration, waterflows, and levels that would degrade or eliminate Yosemite toad habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the Yosemite toad.

(4) Actions that eliminate upland foraging or overwintering habitat, as well as dispersal habitat, for the Yosemite toad. Such activities could include, but are not limited to, livestock overgrazing, road construction, recreational development, timber harvest activities, unauthorized off-road vehicle or recreational use, and other watershed and floodplain disturbances.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designations.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if 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. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

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. The proposed critical habitat areas include Federal, State, and private lands, some of which are used for livestock grazing, timber harvest, and recreation (for example, camping, hiking, and fishing). Other land uses that may be affected will be identified as we develop a draft economic analysis for the proposed designation.

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 Sacramento Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). 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 where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not currently seeking to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any habitat conservation plans (HCPs) or other management plans for the area,

or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, or Yosemite toad, and the proposed designation does not include any tribal lands or trust resources. Therefore, we anticipate no impact to tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary is not currently seeking to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

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. The purpose of such review is to ensure that our proposed actions are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during 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 the **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

Our draft economic analysis will be completed after this proposed rule is published. Therefore, we will defer our Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Energy Supply, Distribution, or Use—Executive Order 13211, Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), and Small Business Regulatory Enforcement Fairness Act (SBREFA), findings until after this analysis is done.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (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.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as 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 forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may

certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this proposed regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this proposed designation of critical habitat would only directly regulate Federal agencies, which are not by definition small business entities. As such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

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. We do not expect that, if adopted as proposed, the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use. The degree of spatial overlap between proposed critical habitat and extant hydropower is insignificant, and normal operations of these resources within current guidelines are not anticipated to adversely modify critical habitat. 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 would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because a very tiny fraction of designated critical habitat is 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), we have analyzed the potential takings implications of designating critical habitat for Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical

habitat in areas currently occupied by the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that are occupied by the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad at the time of listing that contain the features essential to conservation of the species, and no tribal lands unoccupied by the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad on tribal lands.

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 Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Sacramento 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—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.95, amend paragraph (d) by adding entries for "Mountain Yellow-legged Frog (*Rana muscosa*), Northern California DPS", "Sierra Nevada Yellow-legged Frog (*Rana sierrae*)", and "Yosemite Toad (*Anaxyrus canorus*)" in the same alphabetical order that these

species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Mountain Yellow-Legged Frog (*Rana muscosa*), Northern California DPS

(1) Critical habitat units are depicted for Fresno and Tulare Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog consist of:

(i) *Aquatic habitat for breeding and rearing.* Habitat that consists of permanent water bodies, or those that are either hydrologically connected with, or close to, permanent water bodies, including, but not limited to, lakes, streams, rivers, tarns, perennial creeks (or permanent plunge pools within intermittent creeks), pools (such as a body of impounded water contained above a natural dam), and other forms of aquatic habitat. This habitat must:

(A) Be of sufficient depth not to freeze solid (to the bottom) during the winter (no less than 1.7 m (5.6 ft), but generally greater than 2.5 m (8.2 ft), and optimally 5 m (16.4 ft) or deeper (unless some other refuge from freezing is available)).

(B) Maintain a natural flow pattern, including periodic flooding, and have functional community dynamics in order to provide sufficient productivity and a prey base to support the growth and development of rearing tadpoles and metamorphs.

(C) Be free of fish and other introduced predators.

(D) Maintain water during the entire tadpole growth phase (a minimum of 2 years). During periods of drought, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they may still be considered essential breeding habitat if they provide sufficient habitat in most years to foster recruitment within the reproductive lifespan of individual adult frogs.

(E) Contain:

(*1*) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders;

(*2*) Shallower lake microhabitat with solar exposure to warm lake areas and to foster primary productivity of the food web;

(*3*) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(*4*) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks to provide cover from predators; and

(*5*) Sufficient food resources to provide for tadpole growth and development.

(ii) *Aquatic nonbreeding habitat (including overwintering habitat).* This habitat may contain the same characteristics as aquatic breeding and rearing habitat (often at the same locale), and may include lakes, ponds, tarns, streams, rivers, creeks, plunge pools within intermittent creeks, seeps, and springs that may not hold water long enough for the species to complete its aquatic life cycle. This habitat provides for shelter, foraging, predator avoidance, and aquatic dispersal of juvenile and adult mountain yellow-legged frogs. Aquatic nonbreeding habitat contains:

(A) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders;

(B) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(C) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks to provide cover from predators;

(D) Sufficient food resources to provide for tadpole growth and development;

(E) Overwintering refugee, where thermal properties of the microhabitat protect hibernating life stages from winter freezing, such as crevices or holes within granite, in and near shore; and/or

(F) Streams, stream reaches, or wet meadow habitats that can function as corridors for movement between aquatic habitats used as breeding or foraging sites.

(iii) *Upland areas.*

(A) Upland areas adjacent to or surrounding breeding and nonbreeding aquatic habitat that provide area for feeding and movement by mountain yellow-legged frogs.

(*1*) For stream habitats, this area extends 25 m (82 ft) from the bank or shoreline.

(*2*) In areas that contain riparian habitat and upland vegetation (for example, mixed conifer, ponderosa pine, montane hardwood conifer, and montane riparian woodlands), the canopy overstory should be sufficiently thin (generally not to exceed 85 percent) to allow sunlight to reach the aquatic habitat and thereby provide basking areas for the species.

(*3*) For areas between proximate (within 300m (984 ft)) water bodies (typical of some high mountain lake habitats), the upland area extends from the bank or shoreline between such water bodies.

(*4*) Within mesic habitats such as lake and meadow systems, the entire area of physically contiguous or proximate habitat is suitable for dispersal and foraging.

(B) Upland areas (catchments) adjacent to and surrounding both breeding and nonbreeding aquatic habitat that provide for the natural hydrologic regime (water quantity) of aquatic habitats. These upland areas should also allow for the maintenance of sufficient water quality to provide for the various life stages of the frog and its prey base.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* The critical habitat subunit maps were originally created using ESRI's ArcGIS Desktop 10 software and then exported as .emf files. All maps are in the North American Datum of 1983 (NAD83), Universal Transverse Mercator (UTM) Zone 10N. The California County Boundaries dataset (Teale Data Center), and the USA Minor Highways, USA Major Roads, and USA Rivers and Streams layers (ESRI's 2010 StreetMap Data) were incorporated as base layers to assist in the geographic location of the critical habitat subunits. The coordinates or plot points or both on which each map is based are available to the public on *http://regulations.gov* at Docket No. FWS–R8–ES–2012–0074, on our Internet site (*http://www.fws.gov/sacramento*), and at the Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento CA 95825.

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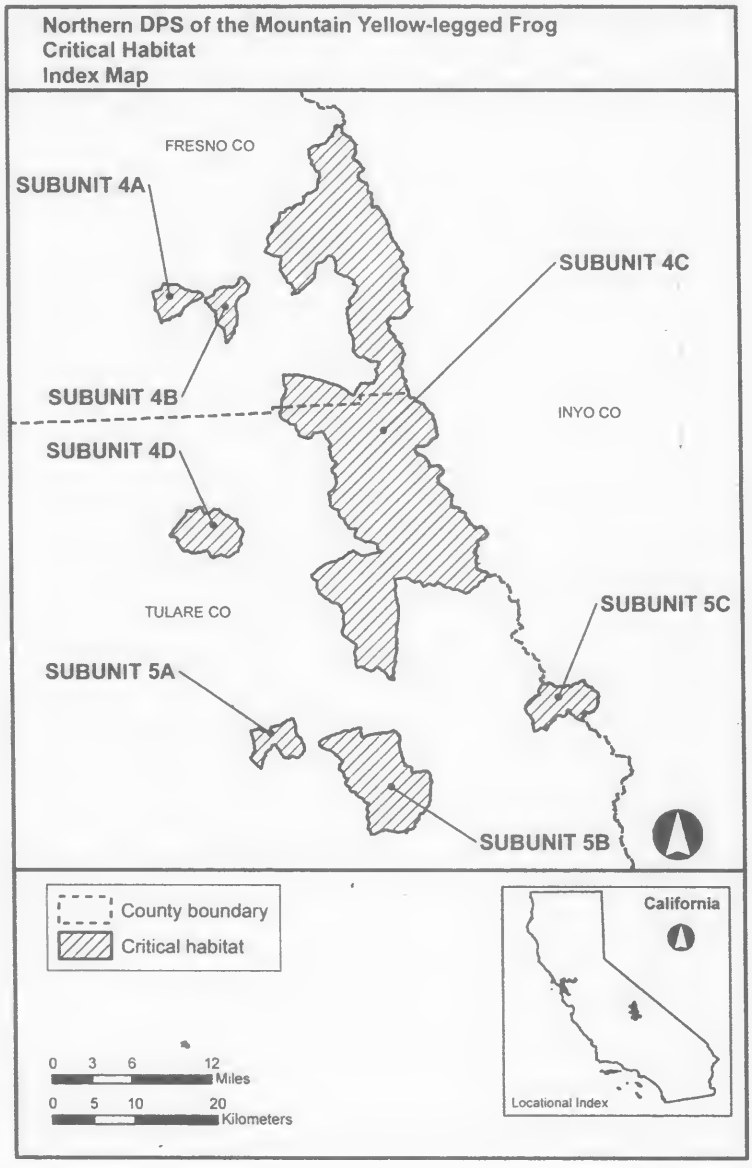
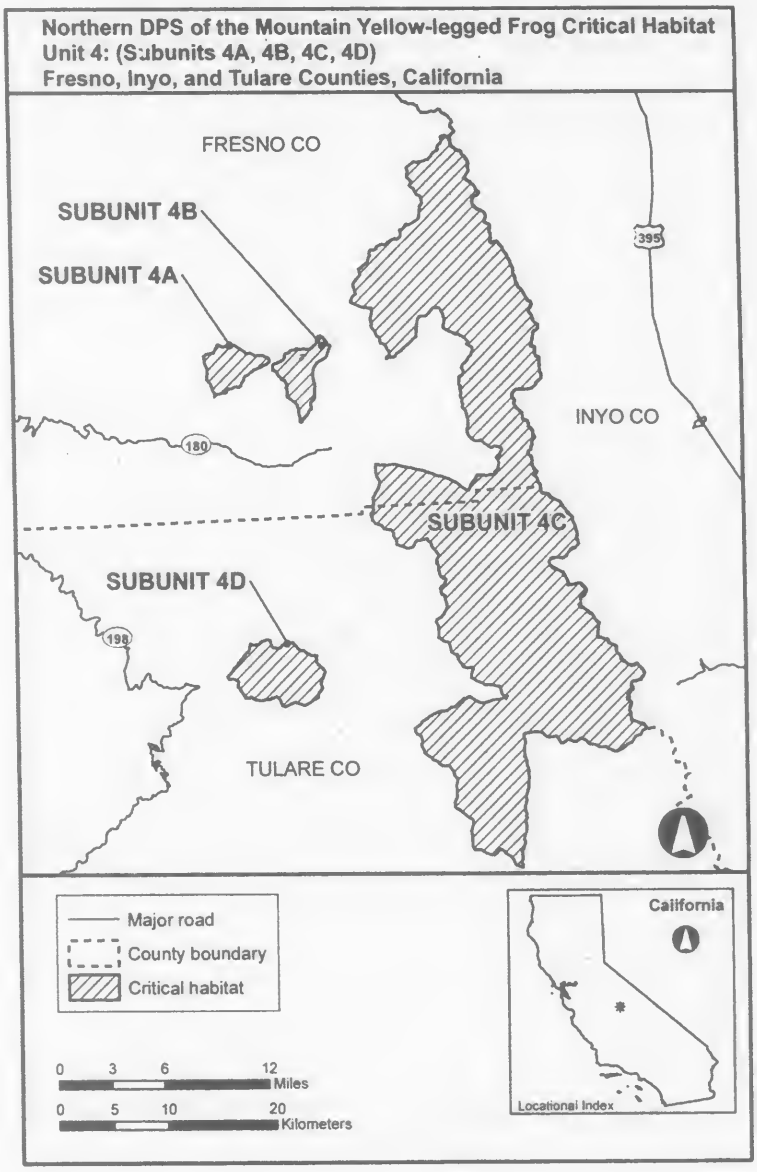
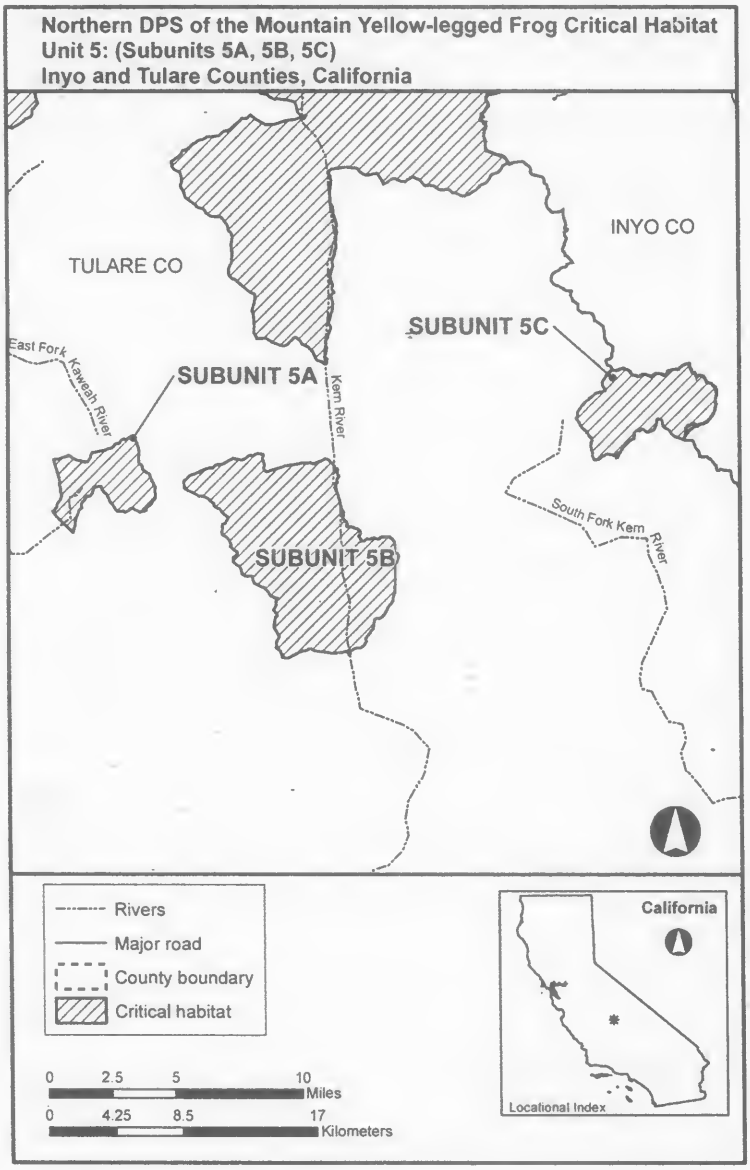
(5) Index map for northern DPS of the mountain yellow-legged frog critical habitat follows:



(6) Unit 4 (Subunits 4A, 4B, 4C, 4D), Fresno, Inyo, and Tulare Counties, California. Map follows:



(7) Unit 5 (Subunits 5A, 5B, 5C), Tulare and Inyo Counties, California. Map follows:



* * * * *

Sierra Nevada Yellow-Legged Frog (*Rana sierrae*)

(1) Critical habitat units are depicted for Lassen, Butte, Plumas, Sierra, Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog consist of:

(i) *Aquatic habitat for breeding and rearing.* Habitat that consists of permanent water bodies, or those that are either hydrologically connected with, or close to, permanent water bodies, including, but not limited to, lakes, streams, rivers, tarns, perennial creeks (or permanent plunge pools within intermittent creeks), pools (such as a body of impounded water contained above a natural dam), and other forms of aquatic habitat. This habitat must:

(A) Be of sufficient depth not to freeze solid (to the bottom) during the winter (no less than 1.7 m (5.6 ft), but generally greater than 2.5 m (8.2 ft), and optimally 5 m (16.4 ft) or deeper (unless some other refuge from freezing is available)).

(B) Maintain a natural flow pattern, including periodic flooding, and have

functional community dynamics in order to provide sufficient productivity and a prey base to support the growth and development of rearing tadpoles and metamorphs.

(C) Be free of fish and other introduced predators.

(D) Maintain water during the entire tadpole growth phase (a minimum of 2 years). During periods of drought, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they may still be considered essential breeding habitat if they provide sufficient habitat in most years to foster recruitment within the reproductive lifespan of individual adult frogs.

(E) Contain:

(*1*) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders;

(*2*) Shallower lake microhabitat with solar exposure to warm lake areas and to foster primary productivity of the food web;

(*3*) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(*4*) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks to provide cover from predators; and

(*5*) Sufficient food resources to provide for tadpole growth and development.

(ii) *Aquatic nonbreeding habitat (including overwintering habitat).* This habitat may contain the same characteristics as aquatic breeding and rearing habitat (often at the same locale), and may include lakes, ponds, tarns, streams, rivers, creeks, plunge pools within intermittent creeks, seeps, and springs that may not hold water long enough for the species to complete its aquatic life cycle. This habitat provides for shelter, foraging, predator avoidance, and aquatic dispersal of juvenile and adult mountain yellow-legged frogs. Aquatic nonbreeding habitat contains:

(A) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders;

(B) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(C) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks to provide cover from predators;

(D) Sufficient food resources to provide for tadpole growth and development;

(E) Overwintering refugee, where thermal properties of the microhabitat protect hibernating life stages from winter freezing, such as crevices or holes within granite, in and near shore; and/or

(F) Streams, stream reaches, or wet meadow habitats that can function as corridors for movement between aquatic habitats used as breeding or foraging sites.

(iii) *Upland areas.*

(A) Upland areas adjacent to or surrounding breeding and nonbreeding aquatic habitat that provide area for feeding and movement by mountain yellow-legged frogs.

(*1*) For stream habitats, this area extends 25 m (82 ft) from the bank or shoreline.

(*2*) In areas that contain riparian habitat and upland vegetation (for example, mixed conifer, ponderosa pine, montane hardwood conifer, and montane riparian woodlands), the canopy overstory should be sufficiently thin (generally not to exceed 85 percent) to allow sunlight to reach the aquatic habitat and thereby provide basking areas for the species.

(*3*) For areas between proximate (within 300m (984 ft)) water bodies (typical of some high mountain lake habitats), the upland area extends from the bank or shoreline between such water bodies.

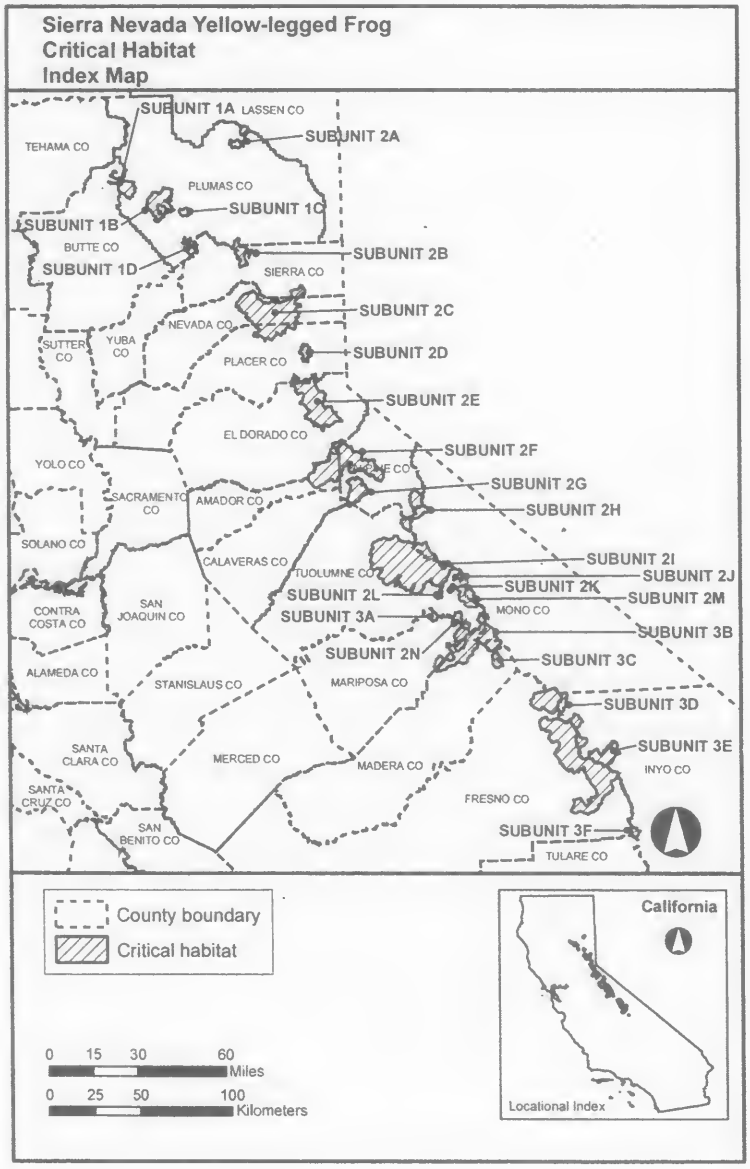
(*4*) Within mesic habitats such as lake and meadow systems, the entire area of physically contiguous or proximate habitat is suitable for dispersal and foraging.

(B) Upland areas (catchments) adjacent to and surrounding both breeding and nonbreeding aquatic habitat that provide for the natural hydrologic regime (water quantity) of aquatic habitats. These upland areas should also allow for the maintenance of sufficient water quality to provide for the various life stages of the frog and its prey base.

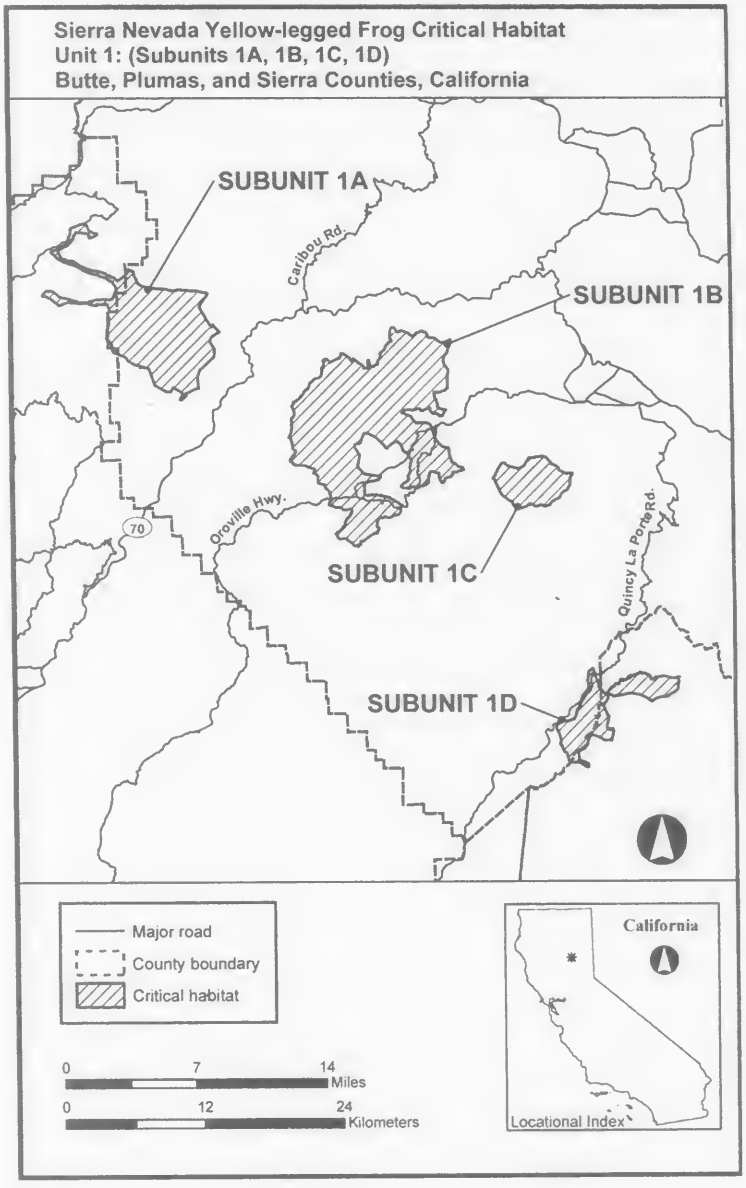
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* The critical habitat subunit maps were originally created using ESRI's ArcGIS Desktop 10 software and then exported as .emf files. All maps are in the North American Datum of 1983 (NAD83), Universal Transverse Mercator (UTM) Zone 10N. The California County Boundaries dataset (Teale Data Center), and the USA Minor Highways, USA Major Roads, and USA Rivers and Streams layers (ESRI's 2010 StreetMap Data) were incorporated as base layers to assist in the geographic location of the critical habitat subunits. The coordinates or plot points or both on which each map is based are available to the public on *http://regulations.gov* at Docket No. FWS–R8–ES–2012–0074, on our Internet site (*http://www.fws.gov/sacramento*), and at the Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento CA 95825.

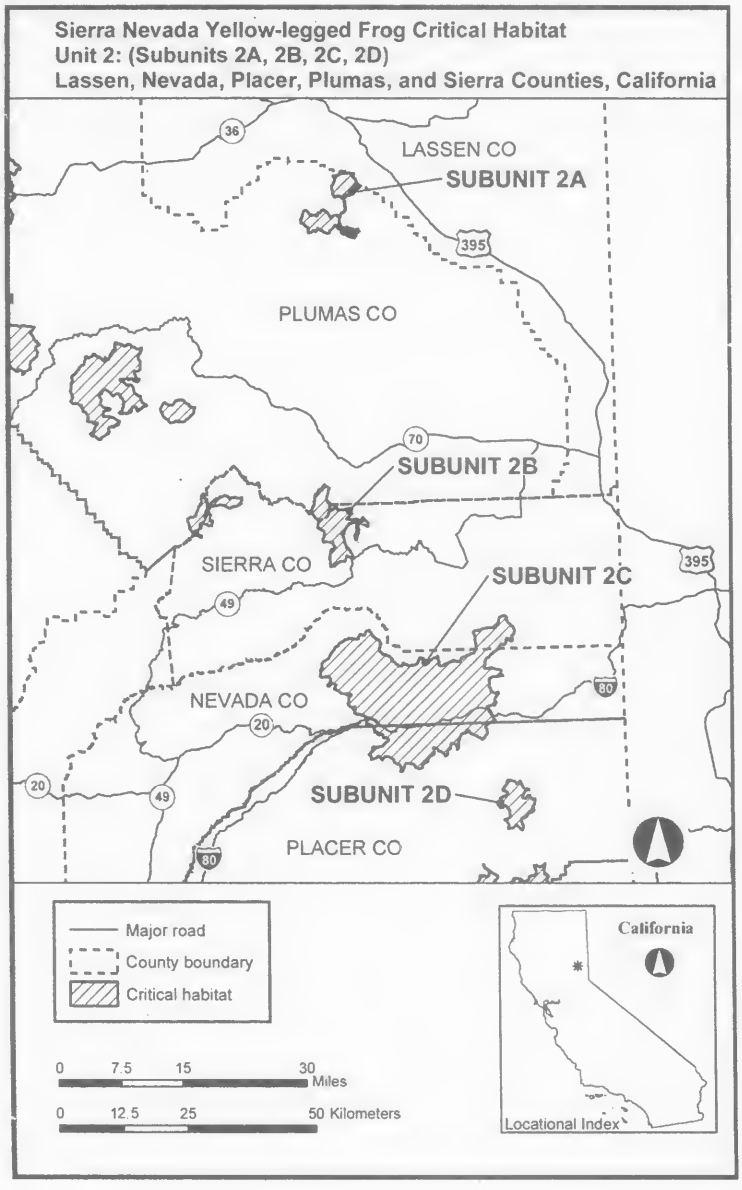
(5) Index map for Sierra Nevada yellow-legged frog critical habitat follows:



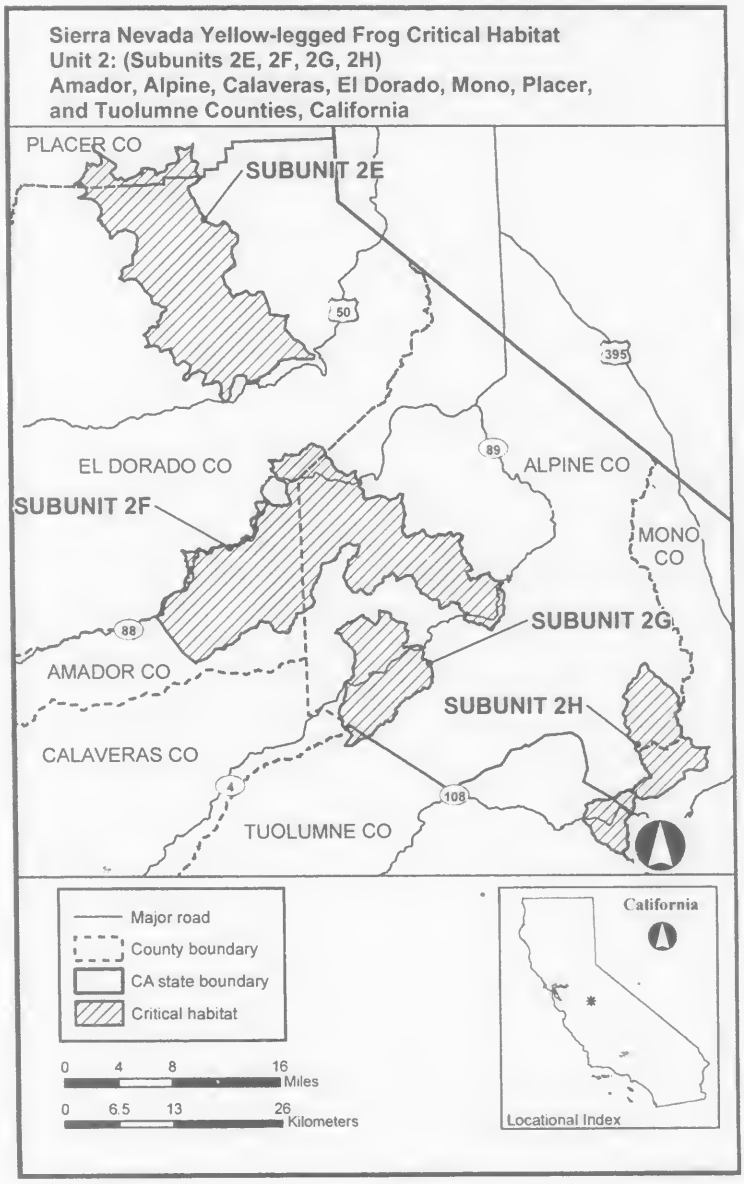
(6) Unit 1 (Subunits 1A, 1B, 1C, 1D), Plumas, Butte, and Sierra Counties, California. Map follows:



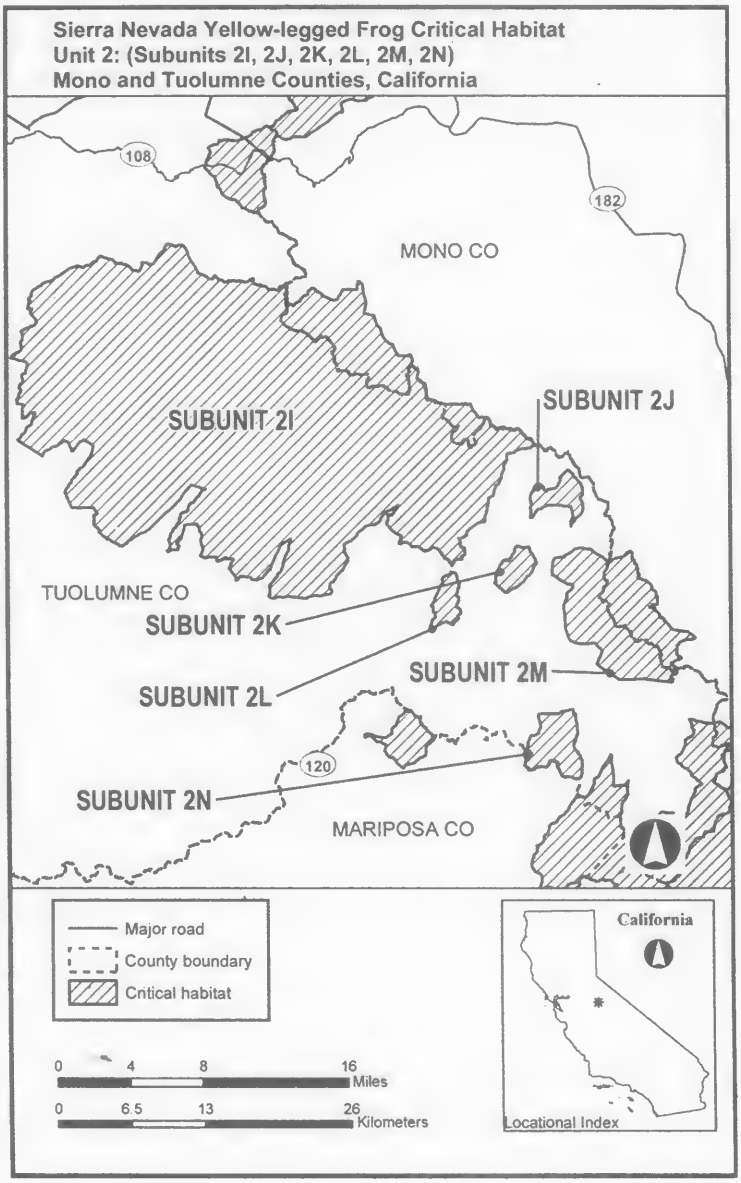
(7) Unit 2 (Subunits 2A, 2B, 2C, 2D), Lassen, Plumas, Sierra, Nevada, and Placer Counties, California. Map follows:



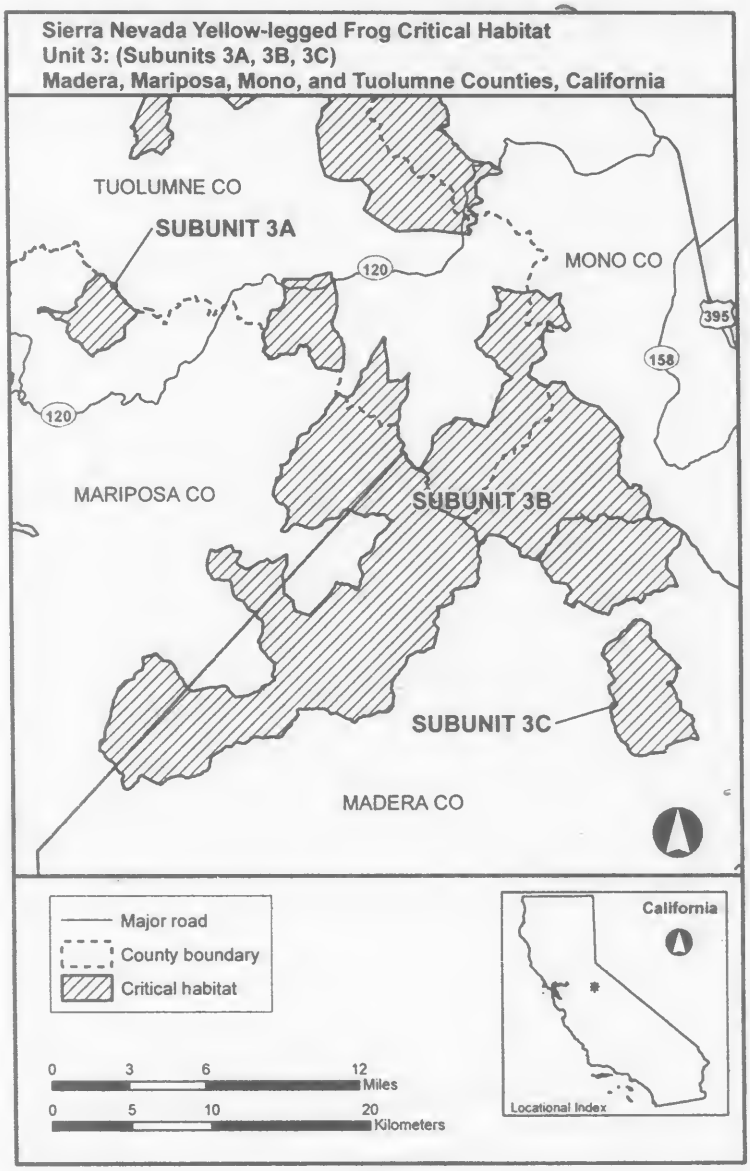
(8) Unit 2 (Subunits 2E, 2F, 2G, 2H), Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, and Mono Counties, California. Map follows:



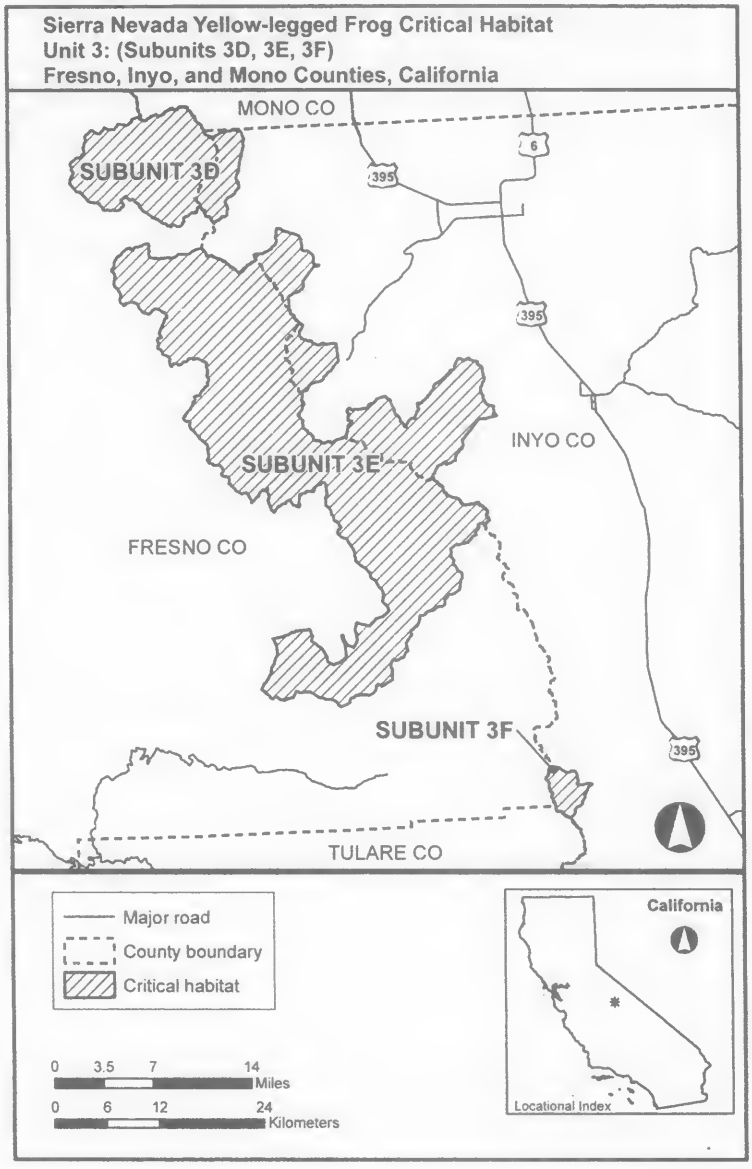
(9) Unit 2 (Subunits 2I, 2J, 2K, 2L, 2M, 2N), Tuolumne and Mono Counties, California. Map follows:



(10) Unit 3 (Subunits 3A, 3B, 3C), Tuolumne, Mariposa, Mono, and Madera Counties, California. Map follows:



(11) Unit 3 (Subunits 3D, 3E, 3F), Mono, Fresno, and Inyo Counties, California. Map follows:



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Yosemite Toad (*Anaxyrus canorus*)

(1) Critical habitat units are depicted for Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Yosemite toad consist of two components:

(i) *Aquatic breeding habitat.* (A) This habitat consists of bodies of fresh water, including wet meadows, slow-moving streams, shallow ponds, spring systems, and shallow areas of lakes, that:

(*1*) Are typically (or become) inundated during snowmelt,

(*2*) Hold water for a minimum of 5 weeks, and

(*3*) Contain sufficient food for tadpole development.

(B) During periods of drought or less than average rainfall, these breeding sites may not hold water long enough for individual Yosemite toads to complete metamorphosis, but they are still considered essential breeding habitat because they provide habitat in most years.

(ii) *Upland areas.* (A) This habitat consists of areas adjacent to or surrounding breeding habitat up to a distance of 1.25 km (0.78 mi) in most

cases (that is, depending on surrounding landscape and dispersal barriers), including seeps, springheads, and areas that provide:

(*1*) Sufficient cover (including rodent burrows, logs, rocks, and other surface objects) to provide summer refugia,

(*2*) Foraging habitat,

(*3*) Adequate prey resources,

(*4*) Physical structure for predator avoidance,

(*5*) Overwintering refugia for juvenile and adult Yosemite toads,

(*6*) Dispersal corridors between aquatic breeding habitats,

(*7*) Dispersal corridors between breeding habitats and areas of suitable summer and winter refugia and foraging habitat, and/or

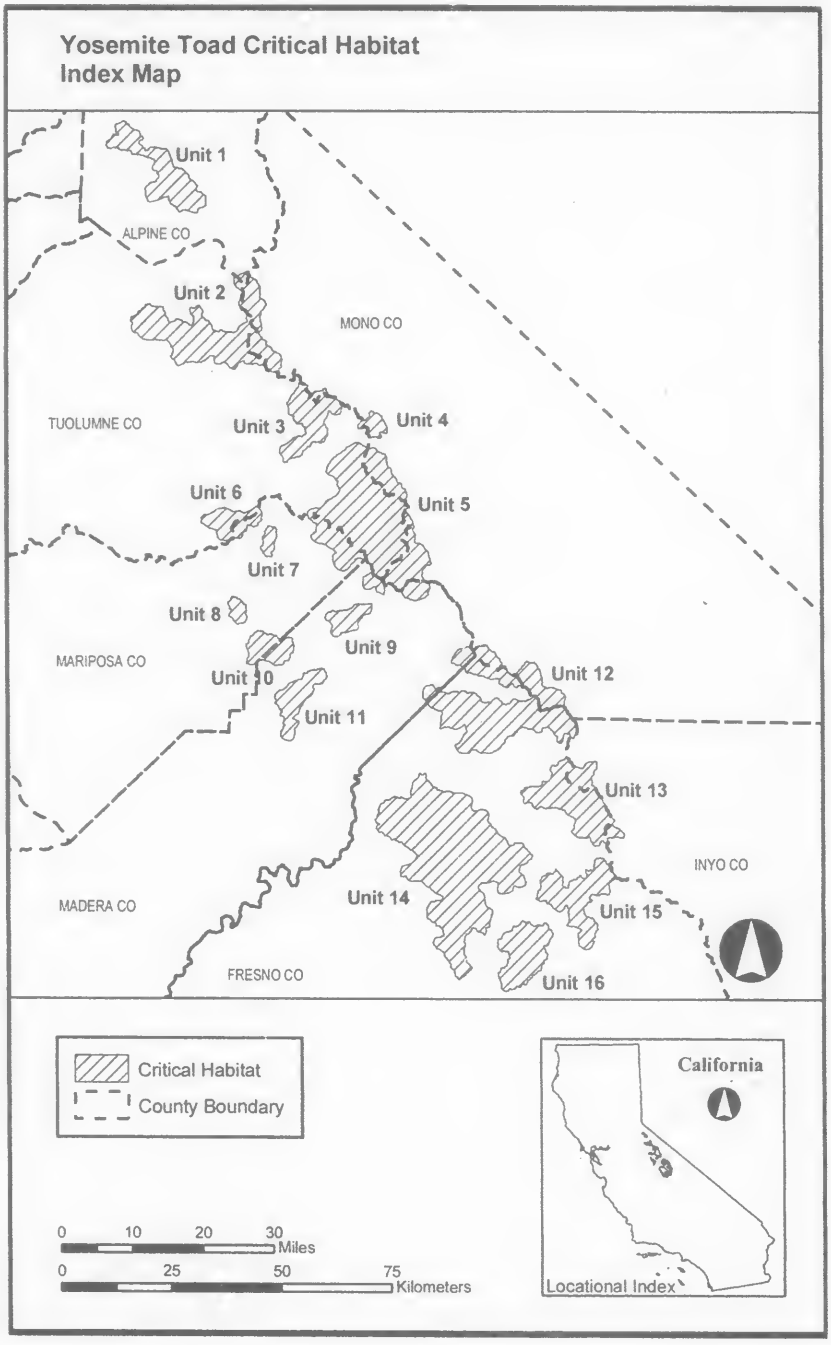
(*8*) The natural hydrologic regime of aquatic habitats (the catchment).

(B) These upland areas should also allow maintain sufficient water quality to provide for the various life stages of the Yosemite toad and its prey base.

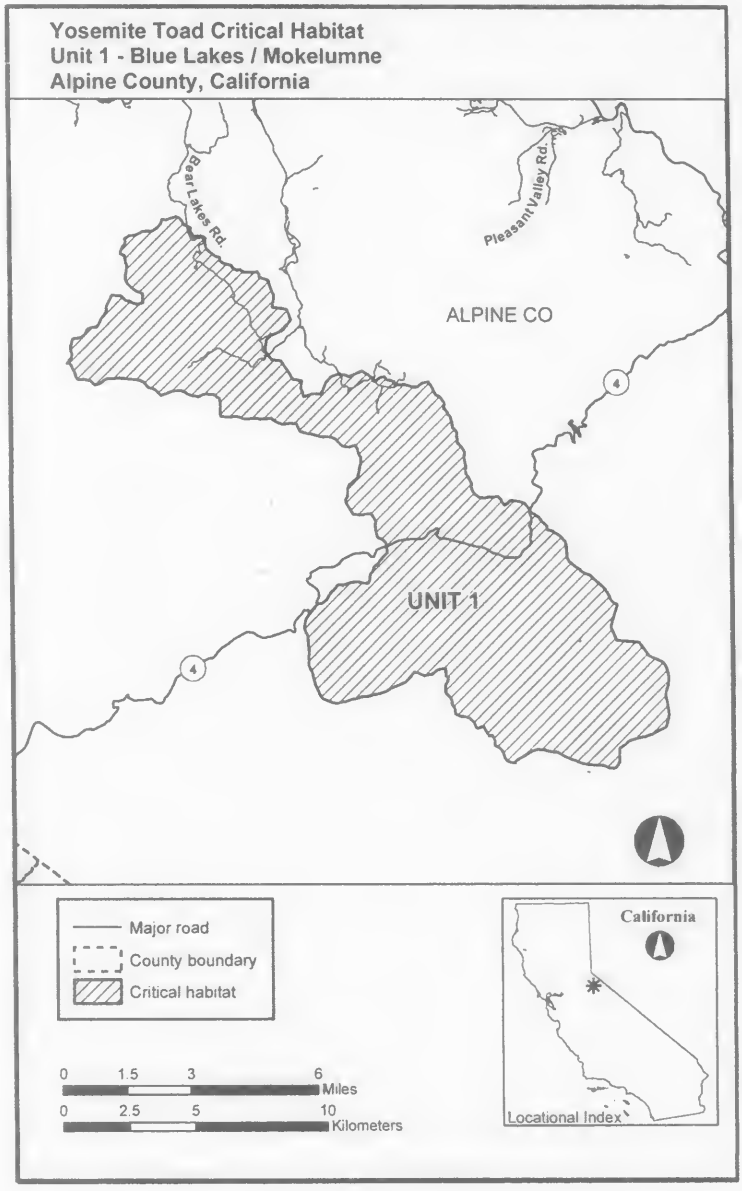
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* The critical habitat subunit maps were originally created using ESRI's ArcGIS Desktop 10 software and then exported as .emf files. All maps are in the North American Datum of 1983 (NAD83), Universal Transverse Mercator (UTM) Zone 10N. The California County Boundaries dataset (Teale Data Center), and the USA Minor Highways, USA Major Roads, and USA Rivers and Streams layers (ESRI's 2010 StreetMap Data) were incorporated as base layers to assist in the geographic location of the critical habitat subunits. The coordinates or plot points or both on which each map is based are available to the public on http://regulations.gov at Docket No. FWS–R8–ES–2012–0100, on our Internet site (http://www.fws.gov/sacramento), and at the Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento CA 95825.

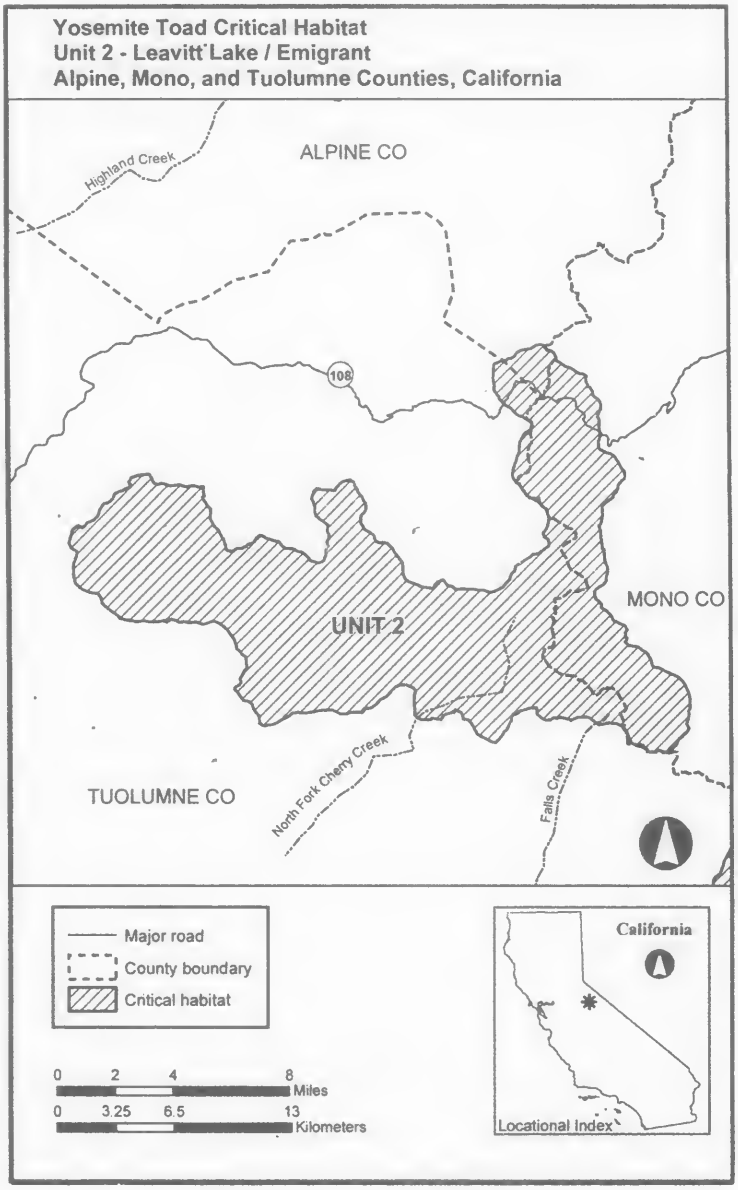
(5) Index map for Yosemite toad critical habitat follows:



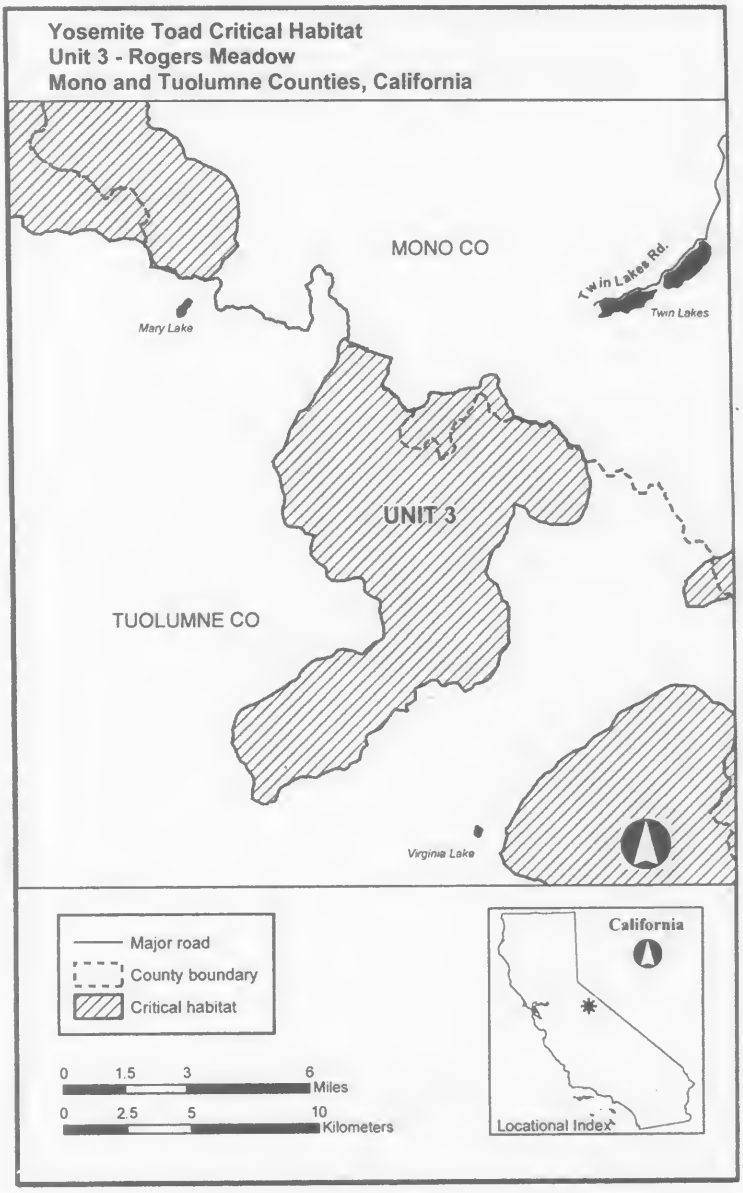
(6) Unit 1: Blue Lakes/Mokelumne, Alpine County, California. Map follows:



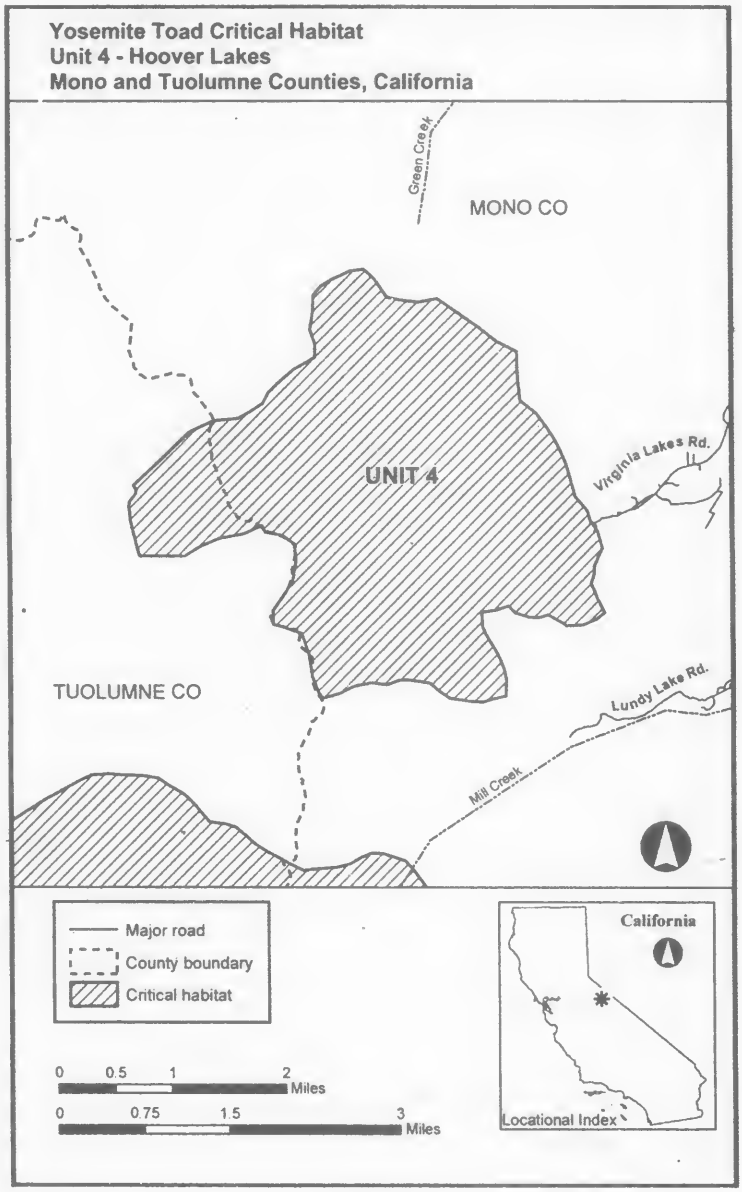
(7) Unit 2: Leavitt Lake/Emigrant, Alpine, Mono, and Tuolumne Counties, California. Map follows:



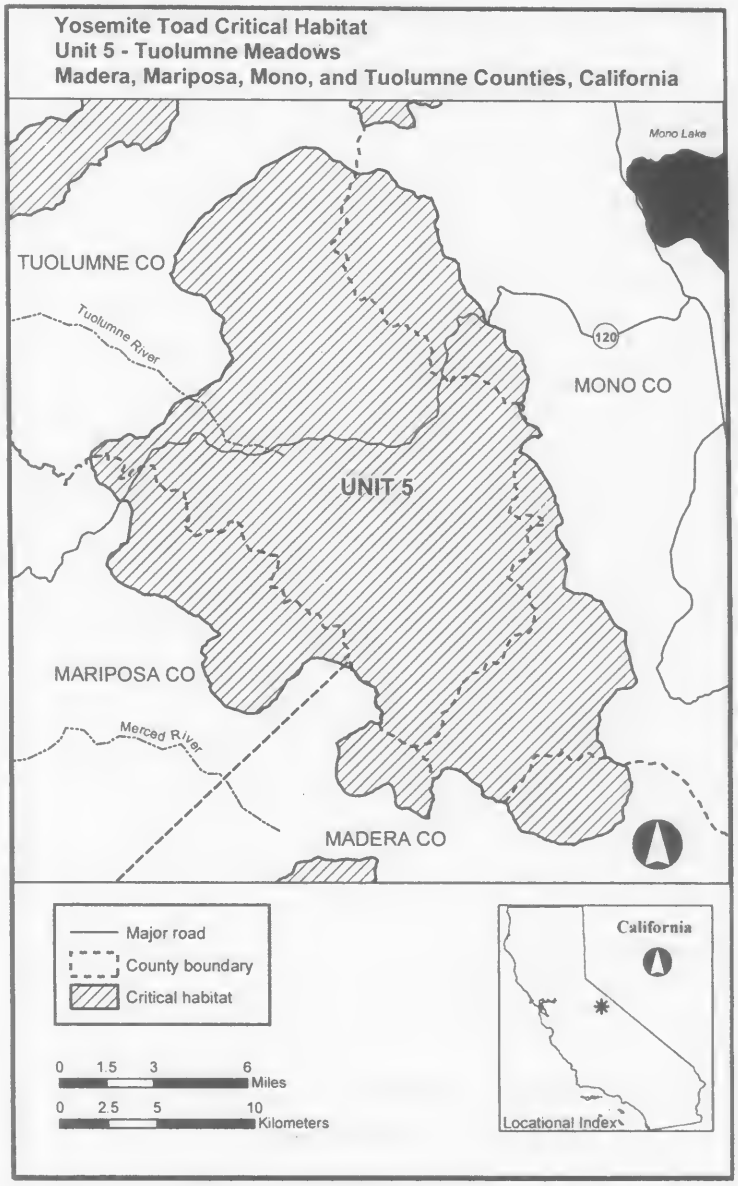
(8) Unit 3: Rogers Meadow, Mono and Tuolumne Counties, California. Map follows:



(9) Unit 4: Hoover Lakes, Mono and Tuolumne Counties, California. Map follows:

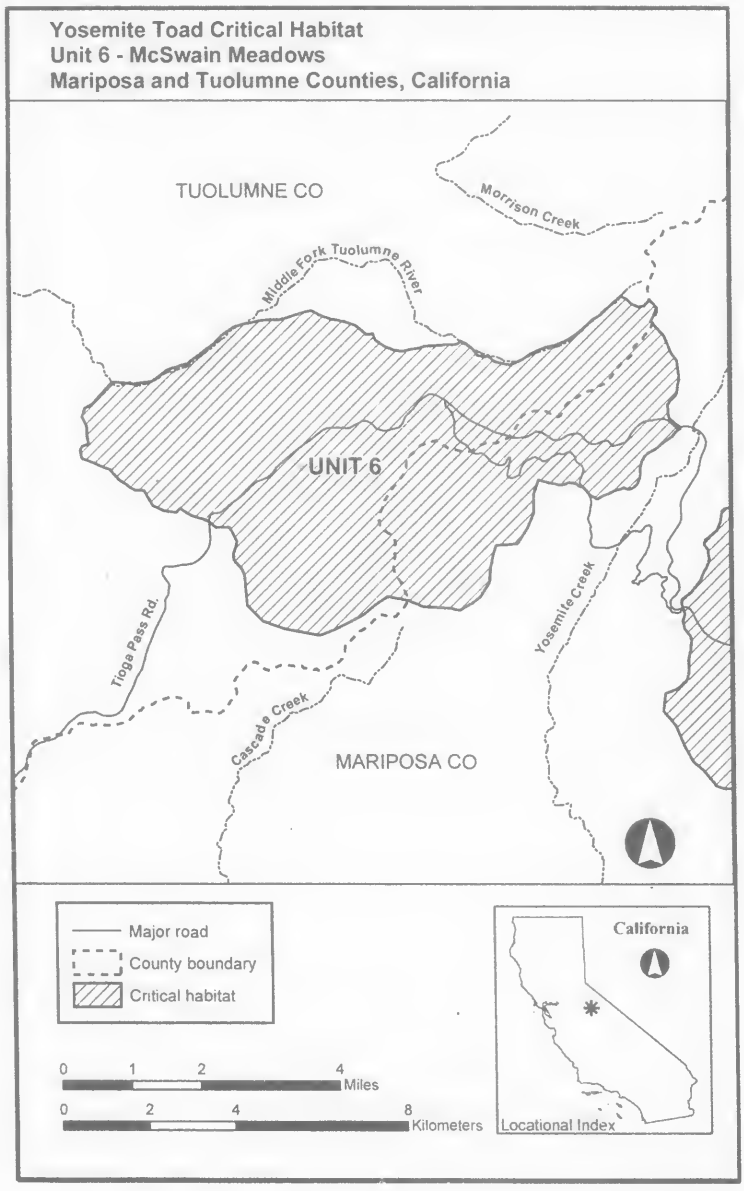


(10) Unit 5: Tuolumne Meadows/Cathedral, Madera, Mariposa, Mono, and Tuolumne Counties, California. Map follows:

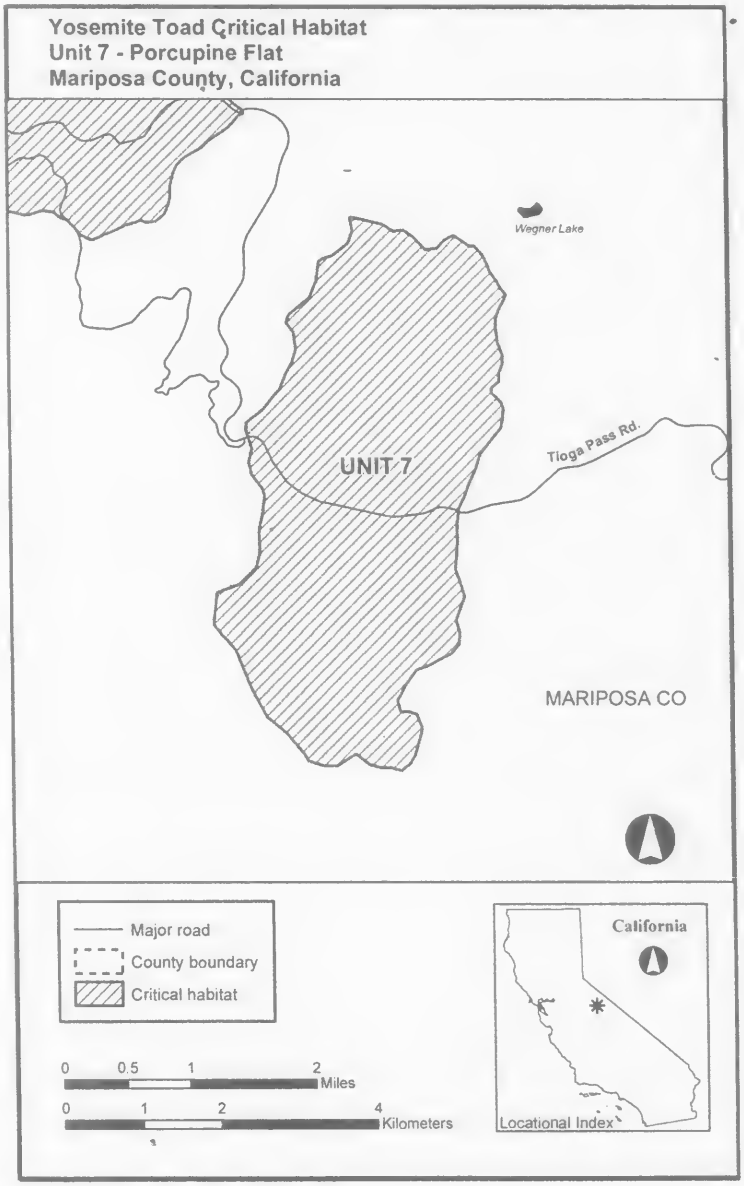


(11) Unit 6: McSwain Meadows, Mariposa and Tuolumne Counties, California.

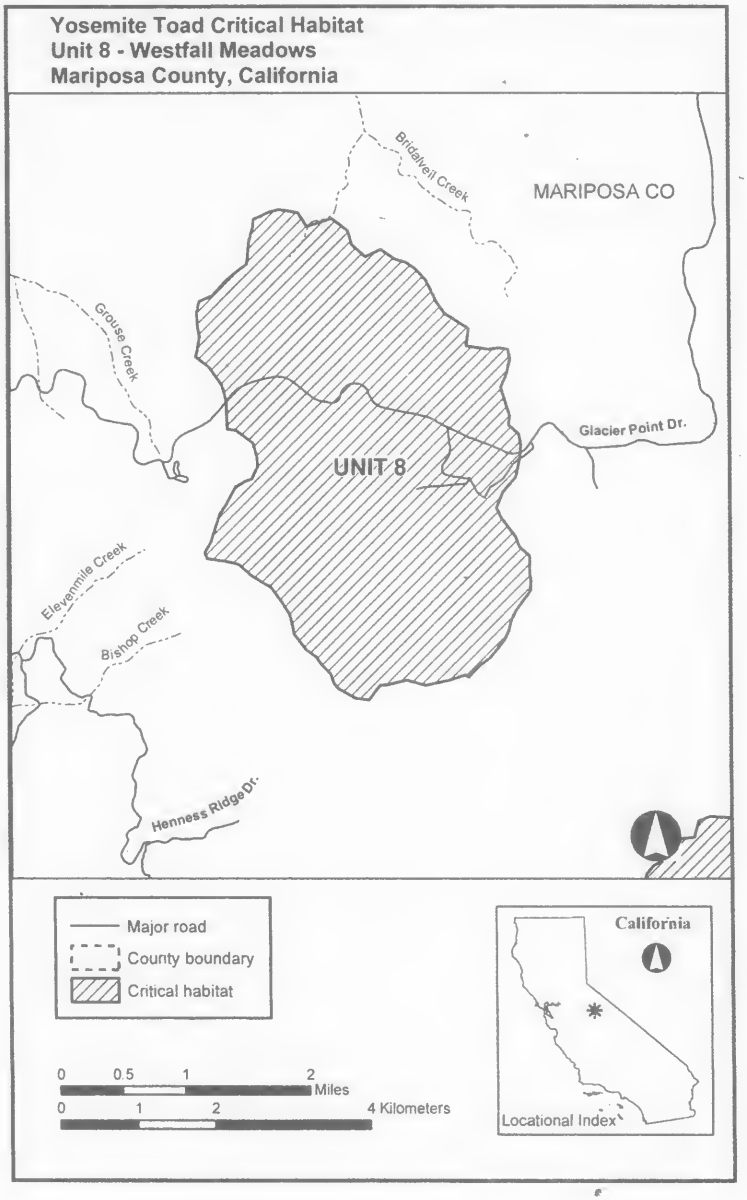
Map follows:



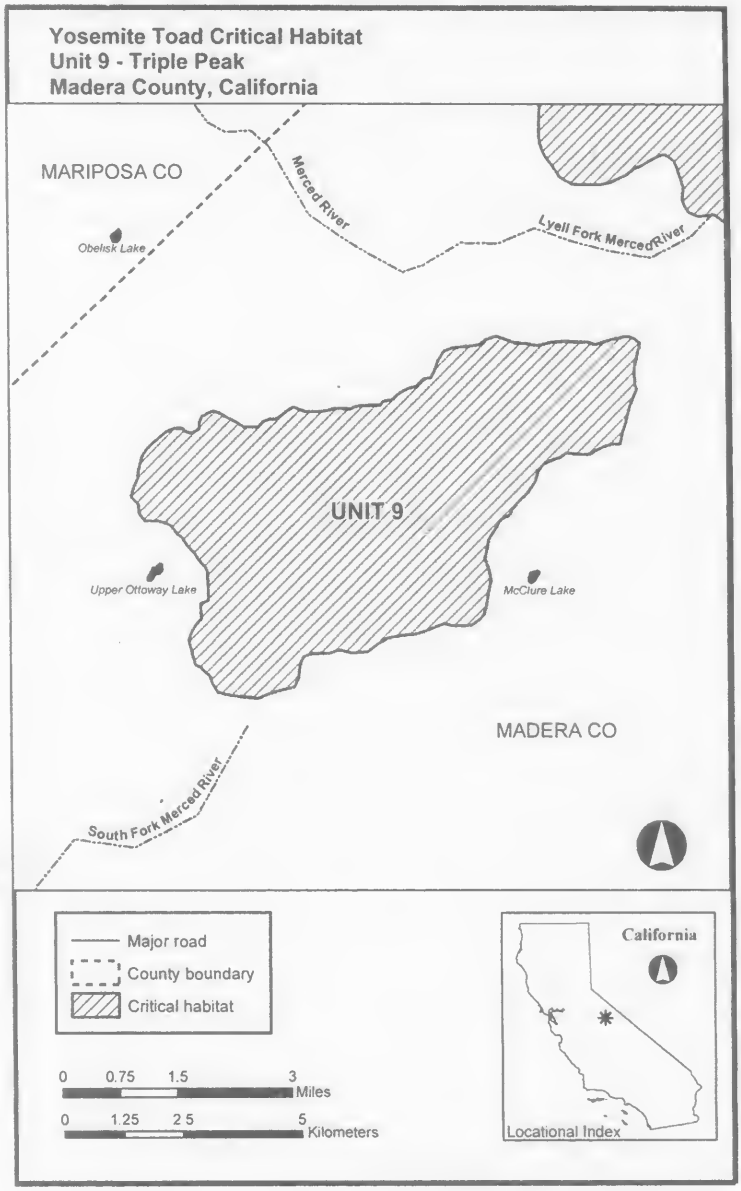
(12) Unit 7: Porcupine Flat, Mariposa County, California. Map follows:



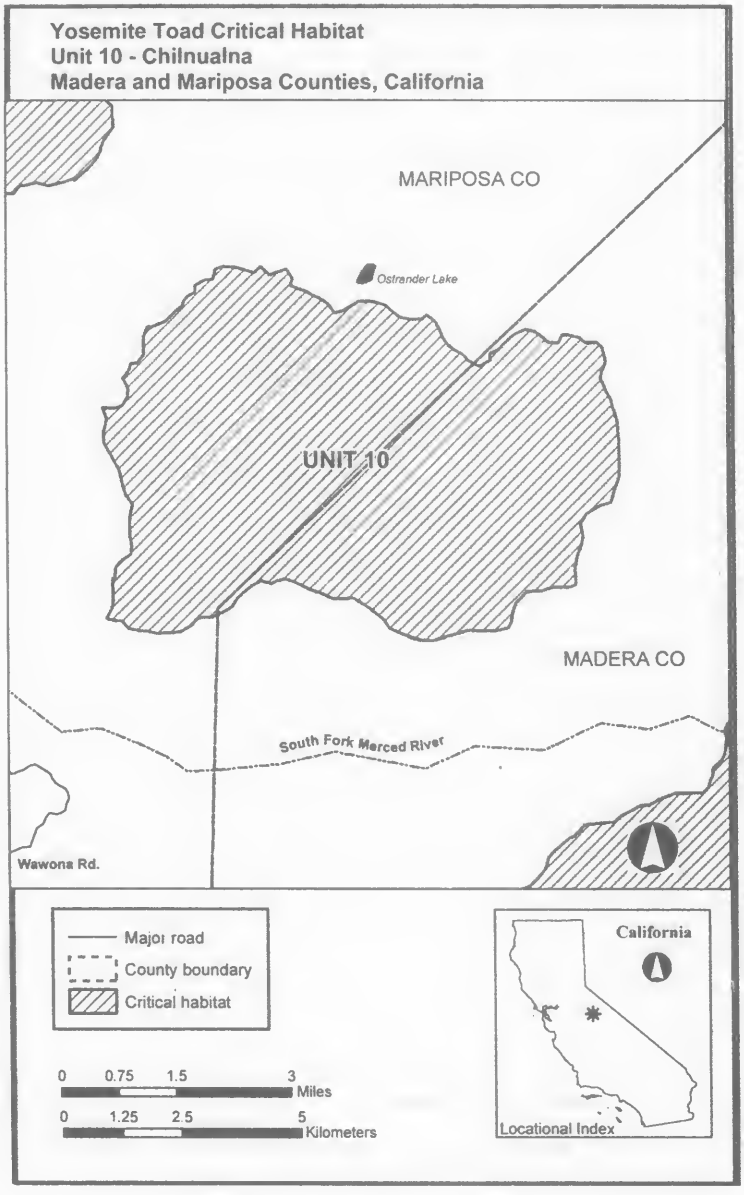
(13) Unit 8: Westfall Meadows, Mariposa County, California. Map follows:



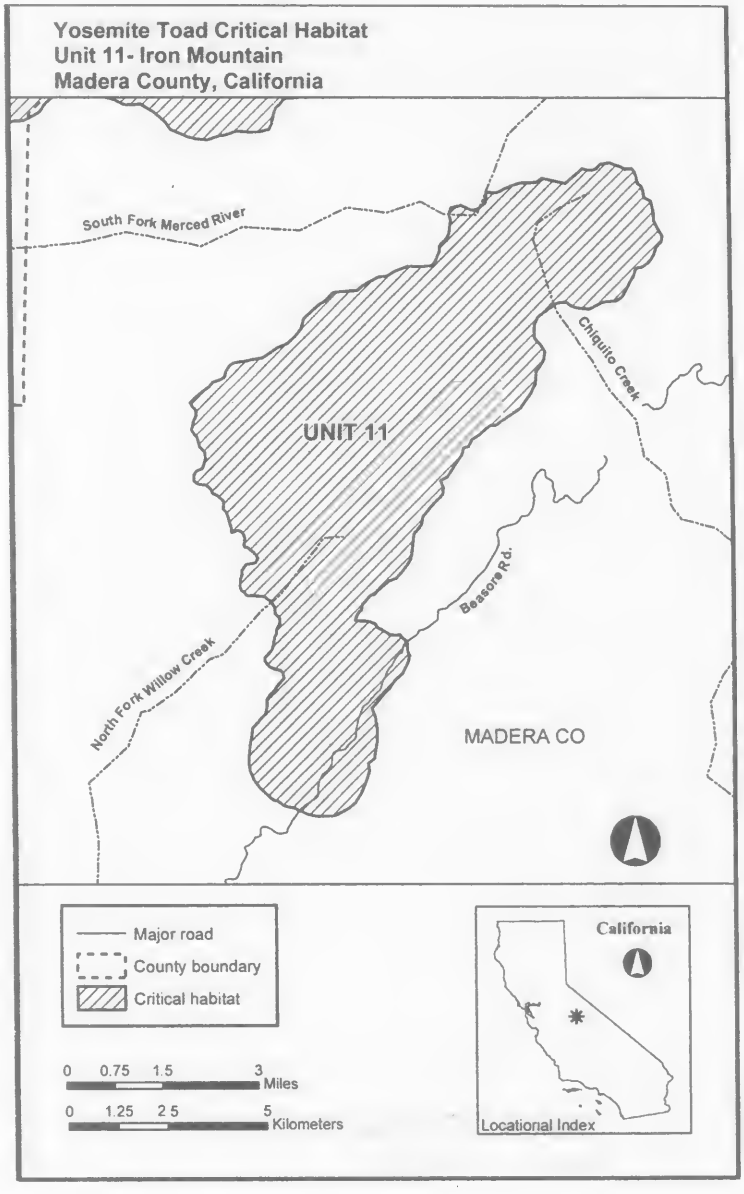
(14) Unit 9: Triple Peak, Madera County, California. Map follows:



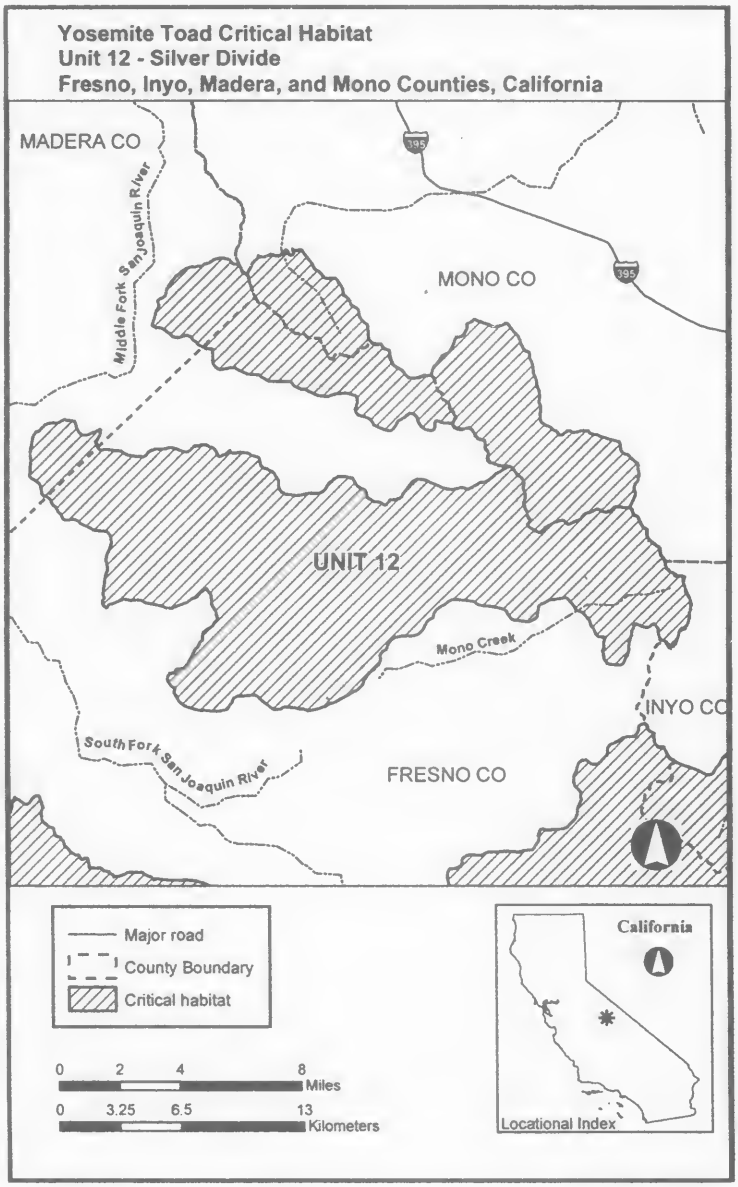
(15) Unit 10: Chilnualna, Madera and Mariposa Counties, California. Map follows:



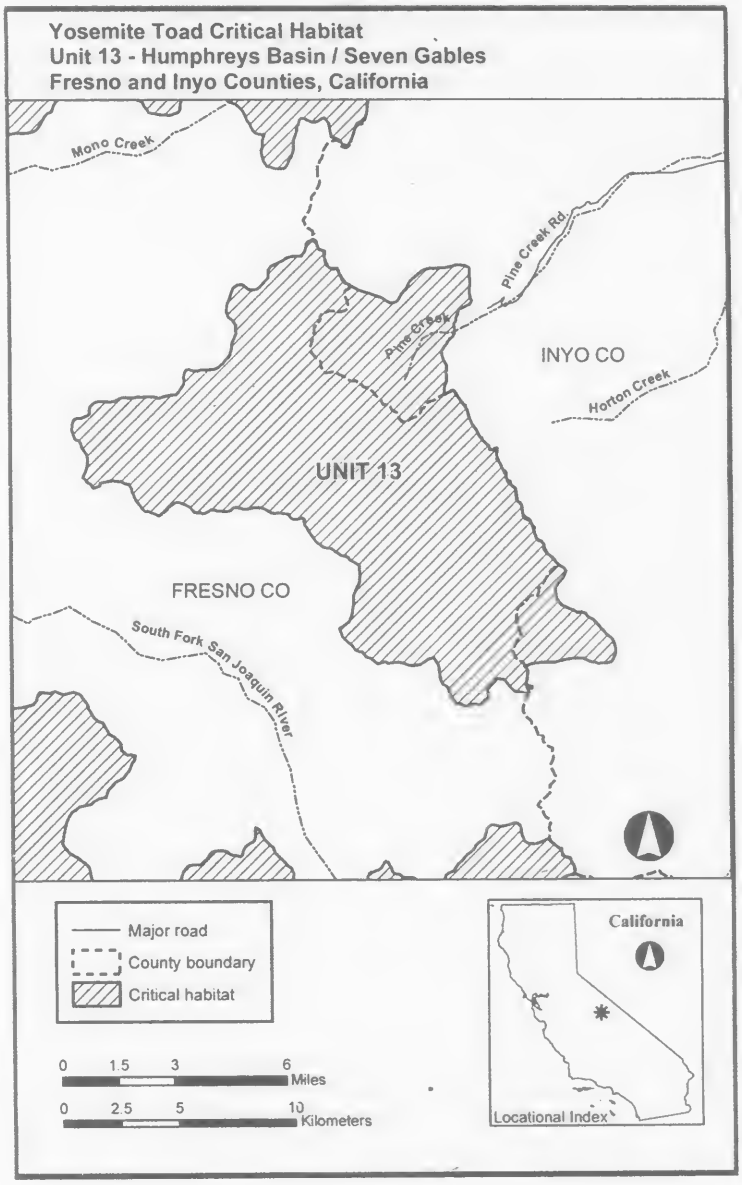
(16) Unit 11: Iron Mountain, Madera County, California. Map follows:



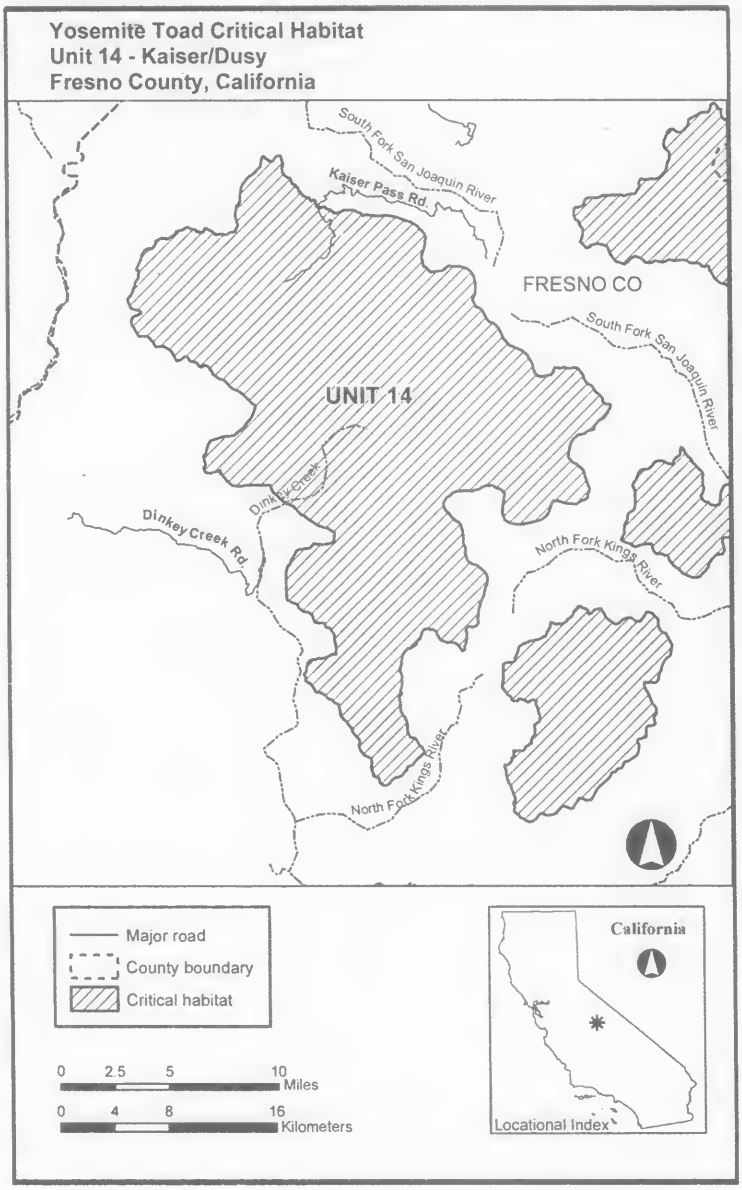
(17) Unit 12: Silver Divide, Fresno, Inyo, Madera, and Mono Counties, California. Map follows:



(18) Unit 13: Humphrys Basin/Seven Gables,Fresno and Inyo Counties, California. Map follows:

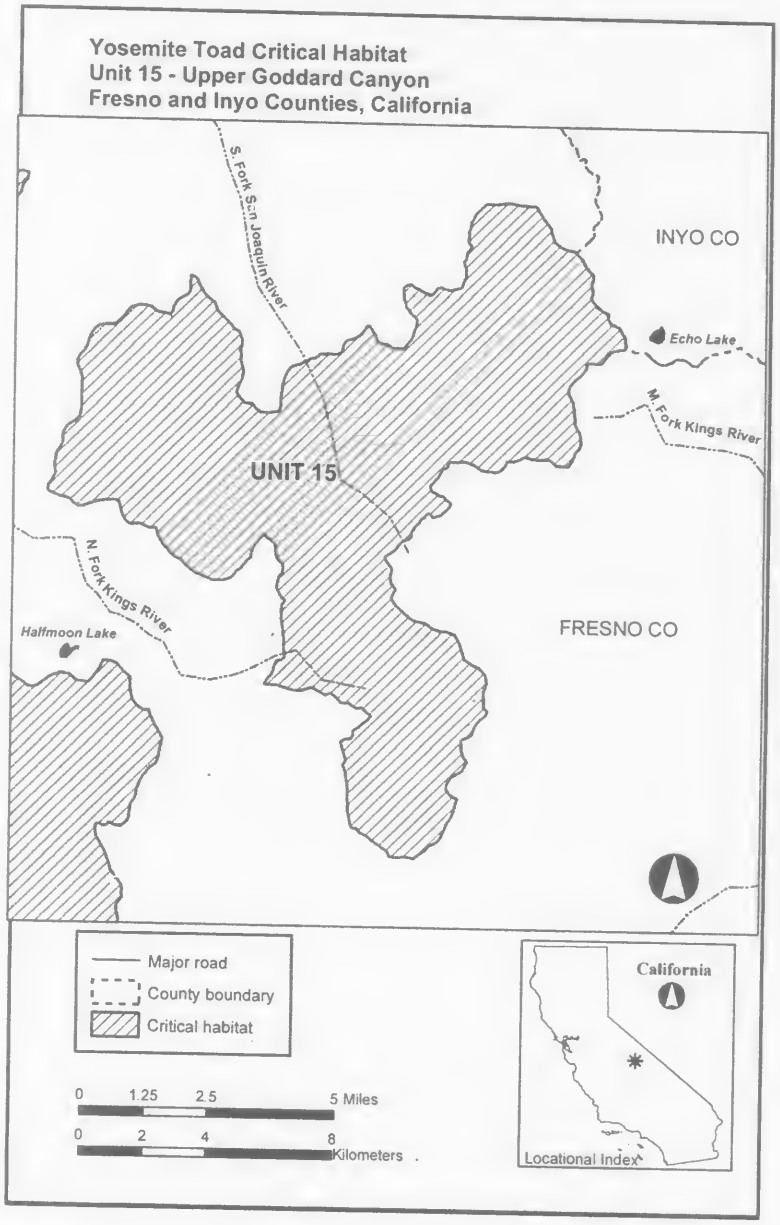


(19) Unit 14:Kaiser/Dusy,Fresno County, California. Map follows:

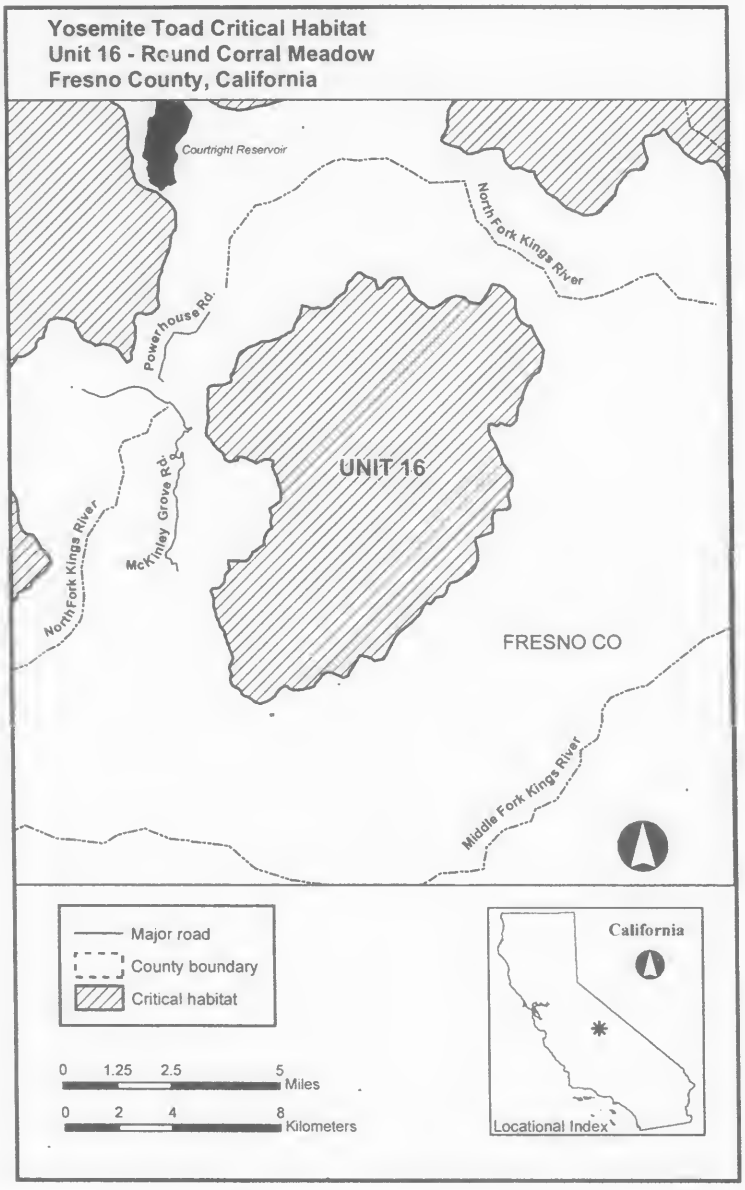


(20) Unit 15: Upper Goddard Canyon, Fresno and Inyo Counties, California.

Map follows:



(21) Unit 16: Round Corral Meadow, Fresno County, California. Map follows:



* * * * *

Dated: April 12, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–09598 Filed 4–24–13; 8:45 am]

BILLING CODE 4310–55–C

FEDERAL REGISTER

Vol. 78 Thursday,
No. 80 April 25, 2013

Part IV

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Part 1010

Imposition of Special Measures Against Kassem Rmeiti & Co. For Exchange and Halawi Exchange Co. as a Financial Institution of Primary Money Laundering Concern, Notice of Finding that Kassem Rmeiti & Co. For Exchange is a Financial Institution of Primary Money Laundering Concern, et al; Proposed Rules and Notices

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB22

Imposition of Special Measures Against Kassem Rmeiti & Co. for Exchange as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In a finding, notice of which is published elsewhere in this issue of the **Federal Register**, the Director of FinCEN found that Kassem Rmeiti & Co. For Exchange ("Rmeiti Exchange") is a financial institution operating outside of the United States that is of primary money laundering concern. FinCEN is issuing this notice of proposed rulemaking ("NPRM") to propose the imposition of two special measures against Rmeiti Exchange.

DATES: Written comments on this NPRM must be submitted on or before June 24, 2013.

ADDRESSES: You may submit comments, identified by RIN 1506–AB22, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB22 in the submission.
- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB22 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on *http://www.regulations.gov.* Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the "Secretary") to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act ("section 311"), codified at 31 U.S.C. 5318A, grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" to address the primary money laundering concern.

II. Imposition of Special Measures Against Rmeiti Exchange as a Financial Institution of Primary Money Laundering Concern

A. Special Measures

As noticed elsewhere in this issue of the **Federal Register**, on April 22, 2013, the Director of FinCEN found that Rmeiti Exchange is a financial institution operating outside the United States that is of primary money laundering concern (the "Finding"). Based upon that Finding, the Director of FinCEN is authorized to impose one or more special measures. Following the consideration of all factors relevant to the Finding and to selecting the special measures proposed in this NPRM, the Director of FinCEN proposes to impose the special measures authorized by section 5318A(b)(1) and (5), (respectively, the "first special measure" and the "fifth special measure"). In connection with this action, FinCEN consulted with staff of the Federal functional regulators, the Department of Justice, and the Department of State, among others.

On April 23, 2013, FinCEN imposed the first special measure by temporary order (the "Order") to immediately address the threat to the U.S. financial system that the activities of Rmeiti Exchange represent.

B. Discussion of Section 311 Factors

In determining which special measures to implement to address the primary money laundering concern, FinCEN considered the following factors.

1. Whether Similar Action Has Been or Will Be Taken by Other Nations or Multilateral Groups Against Rmeiti Exchange

Other countries or multilateral groups have not yet taken action similar to those proposed in this rulemaking that would: (1) Require domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Rmeiti Exchange; (2) prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Rmeiti Exchange; and (3) to require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against processing transactions involving Rmeiti Exchange. FinCEN encourages other countries to take similar action based on the information contained in this notice and the Finding.

2. Whether the Imposition of the First or Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The first special measure imposed by order and sought to be finalized through notice and comment rulemaking requires domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Rmeiti Exchange. Given the general recordkeeping and reporting obligations already in place, FinCEN does not expect any increase in the burden associated with these requirements to be significant. Likewise, U.S. financial institutions generally apply some level of screening and (when required) reporting of their transactions and accounts, often through the use of commercially available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury and to detect potential

suspicious activity. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage these current screening and reporting procedures to detect attempted transactions involving Rmeiti Exchange. As appropriate, the proposal would deem reports filed as Bank Secrecy Act–Suspicious Activity Reports ("BSA–SARs") to comply with this reporting requirement if filed according to the specifications listed in the regulatory text and discussed in the section-by-section analysis. Moreover, the number of transactions to which the recordkeeping and reporting obligations apply is expected to be relatively - limited because, according to available public information, Rmeiti Exchange has account relationships with only a limited number of financial institutions and claims to have an agency or sub-agency relationship with only two U.S. money transmitters. Thus, the additional reporting and recordkeeping requirements that would be required by this rulemaking are not expected to create a significant competitive disadvantage for U.S. financial institutions.

The fifth special measure sought to be imposed by this rulemaking would prohibit covered financial institutions from opening and maintaining correspondent accounts for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Rmeiti Exchange after the effective date of the final rule implementing the fifth special measure. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used to provide services to Rmeiti Exchange. There is a minimal burden involved in transmitting a one-time notice to all foreign correspondent account holders concerning the prohibition on processing transactions involving Rmeiti Exchange through the U.S. correspondent account. As noted above, U.S. financial institutions generally apply some level of automated transaction and account screening, often through the use of commercially available software. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage their current screening procedures to include Rmeiti Exchange and support compliance with this special measure. Thus, the special due diligence that would be required by this rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Rmeiti Exchange

The requirements proposed in this NPRM would target Rmeiti Exchange specifically; they would not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. Rmeiti Exchange is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the first and fifth special measures against Rmeiti Exchange would not have a significant adverse systemic impact on the international payment, clearance, and settlement system.

In light of its Finding that Rmeiti Exchange is of primary money laundering concern and in particular that it poses a risk of terrorism finance, FinCEN believes that any impact on the legitimate business activities of Rmeiti Exchange is outweighed by the need to protect the U.S. financial system. The presence of 365 active money exchanges currently registered in Lebanon will alleviate any burden on legitimate business activities within that jurisdiction.

4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The additional recordkeeping and reporting requirements required by the first special measure will provide FinCEN and law enforcement with greater insight into transactions related to Rmeiti Exchange. This knowledge, in turn, is expected to help FinCEN and law enforcement identify other participants in the money laundering schemes in which Rmeiti Exchange participates or other unidentified money laundering schemes, which would be utilized in efforts to detect and deter these and other financial crimes. Such efforts would enhance national security by making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system.

The exclusion of Rmeiti Exchange from the U.S. financial system as required by the fifth special measure would similarly enhance national security by making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system. More generally, the imposition of the first and fifth special measures would complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering and terrorism financing.

Therefore, pursuant to the finding that Rmeiti Exchange is a financial institution operating outside of the United States of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, the Director of FinCEN proposes to impose the first and fifth special measures.

III. Section-by-Section Analysis for Imposition of First and Fifth Special Measures

A. 1010.658(a)—Definitions

1. Kassem Rmeiti & Co. For Exchange

Section 1010.658(a)(1) of the proposed rule would define Kassem Rmeiti & Co. For Exchange to include all branches, offices, and subsidiaries of Kassem Rmeiti & Co. For Exchange operating in any jurisdiction, including the Rmaiti Group SAL in Lebanon and Societe Rmaiti SARL (STE Rmeiti) located in Benin specifically identified by FinCEN.

Covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Rmeiti Exchange.

2. Correspondent Account

Section 1010.658(a)(2) of the proposed rule would define the term "correspondent account" by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, "payable through accounts" are a type of correspondent account.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of "account" for purposes of this rule as was established for

depository institutions in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[1]

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies ("mutual funds"), FinCEN is also using the same definition of "account" for purposes of this rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[2]

3. Covered Financial Institution

Section 1010.658(a)(3) of the proposed rule would define "covered financial institution" with the same definition used in the final rule implementing the provisions of section 312 of the USA PATRIOT Act,[3] which in general includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- a commercial bank;
- an agency or branch of a foreign bank in the United States;
- a Federally insured credit union;
- a savings association;
- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- a trust bank or trust company;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker-commodities; and
- a mutual fund.

4. Principal Money Transmitter

Section 1010.658(a)(4) of the proposed rule would define principal money transmitters as money transmitters required to register under 31 CFR 1022.380.[4] A person that is a money transmitter solely because that person serves as an agent of another money transmitter and does not process transactions on its own behalf will not be covered by the proposed rule.

5. Subsidiary

Section 1010.658(a)(5) of the proposed rule would define "subsidiary" as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by Rmeiti Exchange.

B. 1010.658(b)—Reporting Requirements for Covered Financial Institutions and Principal Money Transmitters

The proposed rule imposing the first special measure would require covered financial institutions and principal money transmitters to take reasonable steps to collect and report to FinCEN specified information regarding any transaction involving Rmeiti Exchange in which the covered financial institution or principal money transmitter is requested to engage, directly or indirectly, after the imposition of the first special measure. This proposed rule would not alter or otherwise impact other regulatory obligations of covered financial institutions or principal money transmitters under the BSA except if the financial institution fulfilled its reporting obligations under the first special measure by submitting a suspicious activity report.

1. Reporting

(i) Identity of the Participants in a Transaction or Attempted Transaction

Section 1010.658(b)(1)(i) of the proposed rule would require covered financial institutions and principal money transmitters to report the identity and address of the participants in any transaction involving Rmeiti Exchange, including the identity of the transmittor and recipient of any transmittal of funds. This information would include any identifying information the covered financial institution or principal money transmitter obtained in the ordinary course of business, including the information required under 31 CFR 1010.410(f) (generally known as the "travel rule"), such as name, account number if used, address, the identity of the beneficiary's financial institution, or any other specific identifier of the recipient received with the transmittal order. In addition, the proposed rule would require covered financial institutions and principal money transmitters to provide any additional information that it collects in the ordinary course of business relevant to the identity of the participants in a transaction or attempted transaction.

"Transactions involving Rmeiti Exchange" include, at a minimum, any transactions for which the documentation, such as the transmittal order, payment instruction, or SWIFT message, includes the following as a party in any capacity: the name of Rmeiti Exchange; the name of any branches, offices, or subsidiaries of Rmeiti Exchange; or the names of any of the principals of Rmeiti Exchange identified in the finding that appear as acting on behalf of Rmeiti Exchange. Financial institutions should be able to put these names into their existing screening programs to be easily identified and reported.

While inquiries made to the sender of an instruction to obtain additional information not originally included in a received instruction may take extra time and resources, FinCEN believes that these concerns do not outweigh the need to obtain full and accurate information concerning Rmeiti Exchange as quickly as possible. Note, however, that there is no expectation that a covered financial institution or principal money transmitter seek additional information from financial institutions in a chain of intermediaries beyond the immediate counter party from which the covered financial institution or principal money transmitter received the instruction. Some requests for additional information may not yield every item of additional information sought. To supplement the information received from the immediate counter party, the proposed rule would require covered financial institutions and principal money transmitters to provide any additional information that they collect in the ordinary course of business relevant to the identity of the parties involved in the transaction or attempted transaction.

(ii) Legal Capacity

Section 1010.658(b)(1)(ii) of the proposed rule would require covered financial institutions and principal money transmitters to report the legal capacity in which Rmeiti Exchange and any customer of Rmeiti Exchange is acting with respect to the transaction. This would include any identifying information collected by the covered financial institution or principal money transmitter in the ordinary course of business and must include the roles of Rmeiti Exchange or any of its customers in the transaction as set out in the transmittal order, such as transmittor or recipient of a transmittal order or as an intermediary financial institution

[1] *See* 31 CFR 1010.605(c)(2)(i).

[2] *See* 31 CFR 1010.605(c)(2)(ii)–(iv).

[3] *See* 31 CFR 1010.605(e)(1).

[4] 31 CFR 1010.100(ff)(5) defines a money transmitter as (A) A person that provides money transmission services. The term "money transmission services" means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. "Any means" includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or (B) Any other person engaged in the transfer of funds.

involved in the payment chain associated with a transaction. The proposed rule would not require the covered financial institution or principal money transmitter to seek additional information regarding the legal capacity of the parties involved in the transaction beyond what it already has in its possession in the ordinary course of business.

(iii) Description of the Transaction or Attempted Transaction and its Purpose

Section 1010.658(b)(1)(iii) of the proposed rule would require covered financial institutions and principal money transmitters to report a description of the transaction and its purpose. The description would include additional details of the transaction, including amounts, and in particular, a general description of any underlying reason for the transaction or obligation which the financial transaction supports, such as the purchase of specific goods or services, initiation or repayment of a loan or other debt, settlement of a trade, transaction in foreign exchange, or other type of financial obligation, or other relevant information the covered financial institution or principal money transmitter may have available. To the extent a covered financial institution or principal money transmitter finds that it does not have sufficient information to enable it to report a description of the transaction and its purpose, it would be reasonable for the covered financial institution or principal money transmitter to inquire further (for example, with any applicable customer, respondent bank, or correspondent bank) to obtain additional information. In so doing, a covered financial institution or principal money transmitter should consider analogizing to procedures it would follow in fulfilling its obligation to determine whether a transaction should be reported as suspicious, in particular to aid it in examining the available facts, including the background and possible purpose of the transaction to determine whether it is consistent with the type of transaction in which a particular person would normally be expected to engage.

2. When To File

Section 1010.658(b)(2) of the proposed rule would require covered financial institutions and principal money transmitters to make the reports required by Section 1010.658(b)(1) within fifteen business days following the day when the covered financial institution or principal money transmitter engaged in or a decision was made not to engage in the transaction. By ensuring that FinCEN receives information shortly after a transaction is executed or refused to be executed, the contemplated time period will enable FinCEN and law enforcement to more effectively monitor the ongoing activities of Rmeiti Exchange. Based on other time limits contained in the BSA, FinCEN believes the fifteen days allowed by this proposed rule should be sufficient to make the required reports, but acknowledges that in some cases where requests must be made of foreign financial institutions additional time may be required. In such a case, the reports should be filed within fifteen days with whatever information the covered financial institution or principal money transmitter has at that time, and any additional information discovered must be submitted as a supplemental or corrected report. FinCEN requests comment on whether fifteen days is sufficient time for a covered financial institution or principal money transmitter to obtain the required information or whether some other period of time is more appropriate.

Covered financial institutions and principal money transmitters would additionally be required to take reasonable steps to identify any reportable transaction, involving Rmeiti Exchange, to the extent that such use can be determined from transactional records maintained in the ordinary course of business. For example, a covered financial institution or principal money transmitter would be expected to apply an appropriate screening mechanism to be able to identify a transmittal order that on its face listed Rmeiti Exchange as the originator's or beneficiary's financial institution, or otherwise referenced Rmeiti Exchange in a manner detectable under the financial institution's normal screening mechanism. An appropriate screening mechanism could be the mechanism used by a covered financial institution or principal money transmitter to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC. Willful failure to provide timely, accurate, and complete information in such reporting may constitute a violation of these requirements subject to civil and criminal penalties under 31 U.S.C. 5321 and 5322.

FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions and principal money transmitters take reasonable steps to screen their transactions to identify any transaction or attempted transaction involving Rmeiti Exchange.

3. How To File

The proposed rule would require covered financial institutions and principal money transmitters to report in a CSV file such information as determined by the Director of FinCEN as relevant to the identity of the participants, their legal capacity, and description of the transaction. This information could include the following requested information contained in the Order: Transaction Reference Number, Payment Date, Instruction Date, Payment Amount, Transmittor's Account Number, Transmittors's Full Name, Transmittors's Address, Transmittor's Financial Institution's Identifier, Transmittor's Financial Institution's Name, Transmittor's Financial Institution's Address, Incoming Correspondent Financial Institution's Identifier, Incoming Correspondent Financial Institution's Name, Incoming Correspondent Financial Institution's Address, Outgoing Correspondent Financial Institution's Identifier, Outgoing Correspondent Financial Institution's Name, Outgoing Correspondent Financial Institution's Address, Recipient's Financial Institution's Identifier, Recipient's Financial Institution's Name, Recipient's Financial Institution's Address, Recipient's Account Number, Recipient's Full Name, Recipient's Address, Payment Instructions. Covered financial institutions and principal money transmitters would be required to submit the CSV file in a manner specified by the Director of FinCEN. To ease regulatory burden and as appropriate, the proposal would deem reports filed as BSA–SARs to comply with this reporting requirement if filed within 15 days with all required information included in an attached CSV file and containing, both in the narrative and field 35z, "Rmeiti Exchange SM1 Report". FinCEN specifically solicits comments on the requirements for reporting under the proposed rule.

C. 1010.658(c)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions

1. Prohibition on Use of Correspondent Accounts

Section 1010.658(c)(1) of the proposed rule imposing the fifth special measure would prohibit covered financial institutions from establishing, maintaining, or managing in the United

States any correspondent account for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Rmeiti Exchange, including any of its branches, offices or subsidiaries.

2. Special Due Diligence for Correspondent Accounts To Prohibit Use

As a corollary to the prohibition on maintaining correspondent accounts that processed transactions involving Rmeiti Exchange, section 1010.658(c)(2) of the proposed rule would require a covered financial institution to apply special due diligence to its correspondent accounts that is reasonably designed to guard against processing transactions involving Rmeiti Exchange. That special due diligence must include notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Rmeiti Exchange that such correspondents may not provide Rmeiti Exchange with access to the correspondent account maintained at the covered financial institution and implementing appropriate risk-based procedures to identify transactions involving Rmeiti Exchange.

A covered financial institution may satisfy the notification requirement by transmitting the following notice to its foreign correspondent account holders that it knows or has reason to know provide services to Rmeiti Exchange:

Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 1010.658, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for or on behalf of a foreign banking institution if such correspondent account processes any transaction involving Kassem Rmeiti & Co. For Exchange or any of its subsidiaries. The regulations also require us to notify you that you may not provide Kassem Rmeiti & Co. For Exchange or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Kassem Rmeiti & Co. For Exchange or any of its subsidiaries, we will be required to take appropriate steps to prevent such access, including terminating your account.

A covered financial institution would, for example, have knowledge through transaction screening software that the correspondents provide Rmeiti Exchange access to the U.S. correspondent account. The purpose of the notice requirement is to help ensure cooperation from correspondent account holders in denying Rmeiti Exchange access to the U.S. financial system. However, FinCEN would not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement. Methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or email. FinCEN specifically solicits comments on the form and scope of the notice that would be required under the rule.

The special due diligence would also include implementing risk-based procedures designed to identify any use of its correspondent accounts to process transactions involving Rmeiti Exchange. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Rmeiti Exchange as the financial institution of the originator or beneficiary, or otherwise referenced Rmeiti Exchange in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

A covered financial institution would also be required to implement risk-based procedures to identify disguised use of its correspondent accounts including through methods used to hide the beneficial owner of a transaction. Specifically, FinCEN is concerned that Rmeiti Exchange may attempt to disguise its transactions by relying on types of payments and accounts that would not explicitly identify Rmeiti Exchange as an involved party. A financial institution may develop a suspicion of such misuse based on other information in its possession, patterns of transactions, or any other method available to it based on its existing systems. Under the proposed rule, a covered financial institution that suspects or has reason to suspect use of a correspondent account to process transactions involving Rmeiti Exchange must take all appropriate steps to attempt to verify and prevent such use, including a notification to its correspondent account holder per section 1010.658(c)(2)(i)(A) requesting further information regarding a transaction, requesting corrective action to address the perceived risk and, where necessary, terminating the correspondent account. A covered financial institution may reestablish an account closed under the rule if it determines that the account will not be used to process transactions involving Rmeiti Exchange. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to prevent any processing of transactions involving Rmeiti Exchange.

3. Recordkeeping and Reporting

Section 1010.658(c)(3) of the proposed rule would clarify that subsection (c) of the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Rmeiti Exchange that such correspondents may not process any transaction involving Rmeiti Exchange through the correspondent account maintained at the covered financial institution.

IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to impose the first and fifth special measures against Rmeiti Exchange and specifically invites comments on the following matters:

1. The impact of the proposed special measures upon legitimate transactions with Rmeiti Exchange involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business with persons or entities operating in Lebanon.

First Special Measure

2. The form and scope of the reports to FinCEN required under the proposed rule to impose the first special measure;

3. The appropriate time within which a financial institution would be required to report to FinCEN;

4. The requirements for reporting under the proposed rule.

5. The appropriate scope of the proposed requirement for a financial institution to take reasonable steps to identify any reportable transactions by Rmeiti Exchange; and

6. The appropriate steps a financial institution should take once it identifies a transaction related to Rmeiti Exchange.

Fifth Special Measure

7. The form and scope of the notice to certain correspondent account

holders that would be required under the rule;

8. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any use of its correspondent accounts to process transactions involving Rmeiti Exchange; and

9. The appropriate steps a covered financial institution should take once it identifies use of one of its correspondent accounts to process transactions involving Rmeiti Exchange.

V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act ("RFA") requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

A. Proposal To Require a Report of a Transaction or Attempted Transaction Under the First Special Measure

1. Estimate of the Number of Small Entities to Whom the Proposed Rule Will Apply:

The reporting requirement proposed under the first special measure, requires certain covered financial institutions and principal money transmitters to report to FinCEN information associated with transactions or attempted transactions involving Rmeiti Exchange.

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175 million in assets.[5] Of the estimated 8,000 banks, 80% have less than $175 million in assets and are considered small entities.[6] Of the estimated 7,000 credit unions, 90% have less than $175 million in assets.[7] FinCEN estimates that this rule will impact a limited number of banks and credit unions. On the basis of publicly available information, FinCEN understands that Rmeiti Exchange currently maintains no accounts in the United States. Moreover, to the extent that a transaction involving Rmeiti Exchange was to be processed through a U.S. financial institution, this would most likely involve a small subset of the largest financial institutions that actively engage in international transactions. Therefore, FinCEN estimates that this reporting requirement will only impact less than 1% of all small banks and credit unions.

Broker-dealers are defined in 31 CFR 1010.100(h) as certain broker/dealers required to register with the Securities and Exchange Commission ("SEC"). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the Small Business Administration ("SBA"). The SEC has defined the term "small entity" to mean a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release."[8] Currently, based on SEC estimates, there 18% of broker-dealers are classified as "small" entities for purposes of the RFA.[9] Because of the limited number of relationships that Rmeiti Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small broker-dealers.

Futures commission merchants ("FCMs") are defined in 31 CFR 1010.100(x) as those FCMs required to register with the Commodity Futures Trading Commission ("CFTC"). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's "Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act," the CFTC concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.[10] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC. Therefore, the reporting requirements of the first special measure will not impact small FCMs.

For purposes of the RFA, an introducing broker-commodities is considered small if it has less than seven million dollars in gross receipts annually.[11] Based on NAICS code classification and information maintained by the CFTC, FinCEN estimates that there are 1,800 introducing brokers-commodities,[12] 80% of which are small entities.[13] Because of the limited number of relationships that Rmeiti Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small introducing brokers-commodities.

For purposes of the RFA, a mutual fund is considered small if it has less than seven million dollars in gross receipts annually.[14] Based on NAICS code classification and information maintained by the Investment Company Institute, FinCEN estimates that there are 8,700 mutual funds,[15] 90% of which are small entities.[16] Because of the limited number of relationships that Rmeiti Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small mutual funds.

For the purposes of the RFA, a money transmitter is considered small if it has less than seven million dollars in gross receipts annually. Of the estimated 17,000 principal money transmitters, FinCEN estimates 95% have less than seven million in gross receipts annually.[17] As indicated above, the

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[5] *Toble of Small Business Size Standards Motched to Narth American Industry Classification System Cades*, Small Business Administration Size Standards at 27 (SBA Oct. 1, 2012) [hereinafter *SBA Size Stondords*].

[6] Federal Deposit Insurance Corporation, *Find on Institution, http://www2.fdic.gov/idasp/main.asp*; *select* Size or Performance: Total Assets, *type* Equal or less than $: "175000", *select* Find.

[7] National Credit Union Administration, *Credit Union Data, http://webopps.ncuo.gov/custom query/*; *select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: "175000000", *select* Go.

[8] 17 CFR 240.0–10(c).

[9] 76 FR 37572, 37602 (June 27, 2011) (The SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

[10] 47 FR 18618, 18619 (Apr. 30, 1982).

[11] SBA Size Standards at 28.

[12] 77 FR 20128, 20197 (Apr. 3, 2012).

[13] 2007 Economic Census, *Finance and Insurance: Subject Series—Estab and Firm Size: Summary Statistics by Revenue Size of Estoblishments for the United States: 2007* (Introducing brokers-commodities are classified within NAICS code 523140 of which 80% are small).

[14] SBA Size Standards at 28.

[15] Investment Company Institute (ICI) 2012 *Investment Company Foct Book*, at 18 (2012), available at: *http://www.icifactbook.org/pdf/2012_foctbook.pdf* (Number of mutual funds in the United States in 2011).

[16] 2007 Economic Census, *Finonce ond Insurance: Subject Series—Estab and Firm Size: Summary Statistics by Revenue Size of Establishments for the United States: 2007* (Mutual funds are classified within NAICS code 523120 of which 90% are small).

[17] *See* FinCEN *MSB Registration List (3/08/2012), http://www.fincen.gov/financial institutions/msb/*

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reporting required by the first special measure will impact a small subset of the largest money transmitters. FinCEN estimates that the reporting required by the first special measure will impact less than 1% of small money transmitters Therefore, FinCEN has determined that neither a substantial number of small banks nor money transmitters will be significantly impacted by the proposal to require reporting under the first special measure.

2. Description of the Projected Reporting and Recordkeeping Requirements of the First Special Measure:

Covered financial institutions and principal money transmitters at which a transaction is conducted or attempted by Rmeiti Exchange will be required to report information to FinCEN in a CSV file. Covered financial institutions and principal money transmitters would be able to rely on processes already developed to comply with suspicious activity reporting and commercially available software used to comply with the economic sanctions programs administered by OFAC, which can be leveraged to monitor for and report transactions involving Rmeiti Exchange. To ease regulatory burden and as appropriate, the proposal would deem reports filed as BSA–SARs to comply with this reporting requirement if filed within 15 days with all required information included in an attached CSV file and containing both in the narrative and field 35z "Rmeiti Exchange SM1 Report". Because Rmeiti Exchange has been found to be a primary money laundering concern with links to terrorist financing, there will be significant overlap between the information that will be reported to satisfy the first special measure and the long standing requirement to file a BSA–SAR. Therefore, as the form of the reporting is structured to allow covered financial institutions and principal money transmitters to satisfy pre-existing regulatory obligations, any increase in the reporting burden that would be required by the imposition of the first special measure—*i.e.*, reporting of all transactions involving Rmeiti Exchange on a timelier basis—would not impose a significant additional economic burden upon small U.S. financial institutions.

B. Proposal To Prohibit Covered Financial Institutions From Opening or Maintaining Correspondent Accounts With Certain Foreign Banks Under the Fifth Special Measure

1. Estimate of the Number of Small Entities to Whom the Proposed Fifth Special Measure Will Apply:

As noted above, 80% of banks, 90% of credit unions, 18% of broker-dealers, 80% of introducing brokers-commodities, zero FCMs, and 90% of mutual funds are small entities. FinCEN understands that Rmeiti Exchange currently maintains no accounts in the United States. The limited number of foreign banking institutions with which Rmeiti Exchange maintains or will maintain accounts will likely limit the number of covered financial institutions to the largest U.S. banks who actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions which engage in transactions involving Rmeiti Exchange under the fifth special measure would not impact a substantial number of small entities.

2. Description of the Projected Reporting and Recordkeeping Requirements of the Fifth Special Measure:

The proposed fifth special measure will require covered financial institutions to provide a notification intended to ensure cooperation from correspondent account holders in denying Rmeiti Exchange access to the U.S. financial system. FinCEN estimates that burden on institutions providing this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to directly or indirectly process transactions involving Rmeiti Exchange. All U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC sanctions and suspicious activity reporting. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banking institutions involving Rmeiti Exchange. Thus, the special due diligence that would be required by the imposition of the fifth special measure—*i.e.*, the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures to detect indirect use of correspondent accounts—would not impose a significant additional economic burden upon small U.S. financial institutions.

C. Certification

When viewed as a whole, FinCEN does not anticipate that the proposals contained in this rulemaking will have a significant impact on a substantial number of small businesses. Accordingly, FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities from the imposition of the first and fifth special measures regarding Rmeiti Exchange.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by email to *oira submission@omb.eop.gov*) with a copy to FinCEN by mail or email at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by June 24, 2013. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.658 is presented to assist those persons wishing to comment on the information collection.

A. Proposed Information Collection Under the First Special Measure

The provisions in this proposed rule pertaining to the collection of information can be found in sections 1010.658(b)(1). The information required to be reported section 1010.658(b)(1) will be used by the U.S. Government to monitor the activities of the institution of primary money laundering concern. The proposed collection of information will be collected as a separate information collection under previously approved OMB Control Number 1506–0065. The collection of information is mandatory.

msbstateselector.html (Sort list by entities that engage in money transmission and remove repeat registrations).

FinCEN estimates the total annual burden of this collection to be 500 hours.

B. Proposed Information Collection Under the Fifth Special Measure

The notification requirement in section 1010.658(c)(2)(i) is intended to ensure cooperation from correspondent account holders in denying Rmeiti Exchange access to the U.S. financial system. The information required to be maintained by section 1010.658(c)(3)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.658. The class of financial institutions affected by the notification requirement is identical to the class of financial institutions affected by the recordkeeping requirement. The collection of information is mandatory.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, and mutual funds.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden in Hours Per Affected Financial Institution: The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

VII. Executive Order 12866

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, banks and banking, brokers, counter-money laundering, counter-terrorism, foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332 title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Add § 1010.658 to subpart F to read as follows:

§ 1010.658 Special measures against Kassem Rmeiti & Co. For Exchange.

(a) *Definitions.* For purposes of this section:

(1) *Kassem Rmeiti & Co. For Exchange* means all branches, offices, and subsidiaries of Kassem Rmeiti & Co. For Exchange operating in any jurisdiction, including the Rmaiti Group SAL in Lebanon and Societe Rmaiti SARL (STE Rmeiti) located in Benin specifically identified by FinCEN.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii) of this part.

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(1) of this part.

(4) *Principal Money Transmitter* means a money transmitter required to register under § 1022.380 of this chapter.

(5) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Reporting requirements for covered financial institutions and principal money transmitters.* (1) *Reporting.* A covered financial institution or principal money transmitter is required to take reasonable steps to collect and report to FinCEN the following information with respect to any transaction or attempted transaction involving Kassem Rmeiti & Co. For Exchange:

(i) The identity and address of the participants in the transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;

(ii) The legal capacity in which Kassem Rmeiti & Co. For Exchange is acting with respect to the transaction or attempted transaction and, to the extent Kassem Rmeiti & Co. For Exchange is not acting on its own behalf, the customer or other person on whose behalf Kassem Rmeiti & Co. For Exchange is acting; and

(iii) A description of the transaction or attempted transaction and its purpose.

(2) *When to file.* A report required by this paragraph (b) shall be filed by the reporting financial institution within fifteen business days following the day when the covered financial institution or principal money transmitter engaged in the transaction or became aware of an attempted transaction.

(3) *Form of reporting.* A report required by this paragraph (b) shall be filed electronically in a comma separate value format in a manner determined by the Director of FinCEN. However, if a covered financial institution or principal money transmitter determines the reportable transaction to be suspicious, filing FinCEN Form 111 within 15 days with all required information included in an attached comma separated value file and containing both in the narrative and field 35z the text "Rmeiti Exchange SM1 Report" will be deemed to comply with this requirement.

(c) *Prohibition on accounts and due diligence requirements for covered financial institutions.* (1) *Prohibition on use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a foreign banking institution if such correspondent account is being used to process a transaction that involves Kassem Rmeiti & Co. For Exchange.

(2) *Special due diligence of correspondent accounts to prohibit use.* (i) A covered financial institution shall apply special due diligence to its correspondent accounts that is reasonably designed to guard against their use to process transactions involving Kassem Rmeiti & Co. For Exchange. At a minimum, that special due diligence must include:

(A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to Kassem Rmeiti & Co. For Exchange, that such correspondents may not provide Kassem Rmeiti & Co. For Exchange with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its correspondent accounts by Kassem Rmeiti & Co. For Exchange, to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its correspondent accounts to process transactions involving Kassem Rmeiti & Co. For Exchange.

(iii) A covered financial institution that obtains knowledge that a correspondent account may be being used to process transactions involving Kassem Rmeiti & Co. For Exchange, shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) of this section and, where necessary, terminating the correspondent account.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in thisparagraph (c) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: April 20, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2013–09782 Filed 4–23–13; 11:15 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB21

Imposition of Special Measures Against Halawi Exchange Co. as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In a finding, notice of which is published elsewhere in this issue of the **Federal Register**, the Director of FinCEN found that Halawi Exchange Co. ("Halawi Exchange") is a financial institution operating outside of the United States that is of primary money laundering concern. FinCEN is issuing this notice of proposed rulemaking ("NPRM") to propose the imposition of two special measures against Halawi Exchange.

DATES: Written comments on this NPRM must be submitted on or before June 24, 2013.

ADDRESSES: You may submit comments, identified by RIN 1506–AB21, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB21 in the submission.
- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB21 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on *http://www.regulations.gov.* Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the "Secretary") to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act ("section 311"), codified at 31 U.S.C. 5318A, grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" to address the primary money laundering concern.

II. Imposition of Special Measures Against Halawi Exchange as a Financial Institution of Primary Money Laundering Concern

A. Special Measures

As noticed elsewhere in this issue of the **Federal Register**, on April 22, 2013, the Director of FinCEN found that Halawi Exchange is a financial institution operating outside the United States that is of primary money laundering concern (the "Finding"). Based upon that Finding, the Director of FinCEN is authorized to impose one or more special measures. Following the consideration of all factors relevant to the Finding and to selecting the special measures proposed in this NPRM, the Director of FinCEN proposes to impose the special measures authorized by section 5318A(b)(1) and (5), (respectively, the "first special measure" and the "fifth special measure"). In connection with this action, FinCEN consulted with staff of the Federal functional regulators, the Department of Justice, and the Department of State, among others.

On April 23, 2013, FinCEN imposed the first special measure by temporary order (the "Order") to immediately address the threat to the U.S. financial system that the activities of Halawi Exchange represent.

B. Discussion of Section 311 Factors

In determining which special measures to implement to address the primary money laundering concern, FinCEN considered the following factors.

1. Whether Similar Action Has Been or Will Be Taken by Other Nations or Multilateral Groups Against Halawi Exchange

Other countries or multilateral groups have not yet taken action similar to those proposed in this rulemaking that would: (1) Require domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Halawi Exchange; (2) prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Halawi Exchange; and (3) to require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against processing transactions involving Halawi Exchange. FinCEN encourages other countries to take similar action based on the information contained in this notice and the Finding.

2. Whether the Imposition of the First or Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The first special measure imposed by order and sought to be finalized through notice and comment rulemaking requires domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Halawi Exchange. Given the general recordkeeping and reporting obligations already in place, FinCEN does not expect any increase in the burden associated with these requirements to be significant. Likewise, U.S. financial institutions generally apply some level of screening and (when required) reporting of their transactions and accounts, often through the use of commercially available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury and to detect potential suspicious activity. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage these current screening and reporting procedures to detect attempted transactions involving Halawi Exchange. As appropriate, the proposal would deem reports filed as Bank Secrecy Act-Suspicious Activity Reports ("BSA–SARs") to comply with this reporting requirement if filed according to the specifications listed in the regulatory text and discussed in the section-by-section analysis. Moreover, the number of transactions to which the recordkeeping and reporting obligations apply is expected to be relatively limited because, according to available public information, Halawi Exchange has account relationships with only a limited number of financial institutions and claims to have an agency or sub-agency relationship with only two U.S. money transmitters. Thus, the additional reporting and recordkeeping requirements that would be required by this rulemaking are not expected to create a significant competitive disadvantage for U.S. financial institutions.

The fifth special measure sought to be imposed by this rulemaking would prohibit covered financial institutions from opening and maintaining correspondent accounts for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Halawi Exchange after the effective date of the final rule implementing the fifth special measure. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used to provide services to Halawi Exchange. There is a minimal burden involved in transmitting a one-time notice to all foreign correspondent account holders concerning the prohibition on processing transactions involving Halawi Exchange through the U.S. correspondent account. As noted above, U.S. financial institutions generally apply some level of automated transaction and account screening, often through the use of commercially available software. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage their current screening procedures to include Halawi Exchange and support compliance with this special measure. Thus, the special due diligence that would be required by this rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Halawi Exchange

The requirements proposed in this NPRM would target Halawi Exchange specifically; they would not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. Halawi Exchange is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the first and fifth special measures against Halawi Exchange would not have a significant adverse systemic impact on the international payment, clearance, and settlement system.

In light of its Finding that Halawi Exchange is of primary money laundering concern and in particular that it poses a risk of terrorism finance, FinCEN believes that any impact on the legitimate business activities of Halawi Exchange is outweighed by the need to protect the U.S. financial system. The presence of 365 active money exchanges currently registered in Lebanon will alleviate any burden on legitimate business activities within that jurisdiction.

4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The additional recordkeeping and reporting requirements required by the first special measure will provide FinCEN and law enforcement with greater insight into transactions related to Halawi Exchange. This knowledge, in turn, is expected to help FinCEN and law enforcement identify other participants in the money laundering schemes in which Halawi Exchange participates or other unidentified money laundering schemes, which would be utilized in efforts to detect and deter these and other financial crimes. Such efforts would enhance national security by making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system.

The exclusion of Halawi Exchange from the U.S. financial system as required by the fifth special measure would similarly enhance national security by making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system. More generally, the imposition of the first and fifth

special measures would complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering and terrorism financing.

Therefore, pursuant to the finding that Halawi Exchange is a financial institution operating outside of the United States of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, the Director of FinCEN proposes to impose the first and fifth special measures.

III. Section-by-Section Analysis for Imposition of First and Fifth Special Measures

A. 1010.659(a)—Definitions

1. Halawi Exchange Co.

Section 1010.659(a)(1) of the proposed rule would define Halawi Exchange Co. to include all branches, offices, and subsidiaries of Halawi Exchange Co. operating in Lebanon or in any other jurisdiction.

Covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Halawi Exchange Co.

2. Correspondent Account

Section 1010.659(a)(2) of the proposed rule would define the term "correspondent account" by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, "payable through accounts" are a type of correspondent account.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of "account" for purposes of this rule as was established for depository institutions in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[1]

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies ("mutual funds"), FinCEN is also using the same definition of "account" for purposes of this rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[2]

3. Covered Financial Institution

Section 1010.659(a)(3) of the proposed rule would define "covered financial institution" with the same definition used in the final rule implementing the provisions of section 312 of the USA PATRIOT Act,[3] which in general includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- a commercial bank;
- an agency or branch of a foreign bank in the United States;
- a Federally insured credit union;
- a savings association;
- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- a trust bank or trust company;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker-commodities; and
- a mutual fund.

4. Principal Money Transmitter

Section 1010.659(a)(4) of the proposed rule would define principal money transmitters as money transmitters required to register under 31 CFR 1022.380.[4] A person that is a money transmitter solely because that person serves as an agent of another money transmitter and does not process transactions on its own behalf will not be covered by the proposed rule.

5. Subsidiary

Section 1010.659(a)(5) of the proposed rule would define "subsidiary" as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by Halawi Exchange.

B. 1010.659(b)—Reporting Requirements for Covered Financial Institutions and Principal Money Transmitters

The proposed rule imposing the first special measure would require covered financial institutions and principal money transmitters to take reasonable steps to collect and report to FinCEN specified information regarding any transaction involving Halawi Exchange in which the covered financial institution or principal money transmitter is requested to engage, directly or indirectly, after the imposition of the first special measure. This proposed rule would not alter or otherwise impact other regulatory obligations of covered financial institutions or principal money transmitters under the BSA except if the financial institution fulfilled its reporting obligations under the first special measure by submitting a suspicious activity report.

1. Reporting

(i) Identity of the Participants in a Transaction or Attempted Transaction

Section 1010.659(b)(1)(i) of the proposed rule would require covered financial institutions and principal money transmitters to report the identity and address of the participants in any transaction involving Halawi Exchange, including the identity of the transmittor and recipient of any transmittal of funds. This information would include any identifying information the covered financial institution or principal money transmitter obtained in the ordinary course of business, including the information required under 31 CFR 1010.410(f) (generally known as the "travel rule"), such as name, account number if used, address, the identity of the beneficiary's financial institution, or any other specific identifier of the recipient received with the transmittal order. In addition, the proposed rule would require covered financial institutions and principal money transmitters to provide any additional information that it collects in the ordinary course of business relevant to the identity of the participants in a transaction or attempted transaction.

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[1] *See* 31 CFR 1010.605(c)(2)(i).

[2] *See* 31 CFR 1010.605(c)(2)(ii)–(iv).

[3] *See* 31 CFR 1010.605(e)(1).

[4] 31 CFR 1010.100(ff)(5) defines a money transmitter as (A) A person that provides money transmission services. The term "money transmission services" means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. "Any means" includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or (B) Any other person engaged in the transfer of funds.

"Transactions involving Halawi Exchange" include, at a minimum, any transactions for which the documentation, such as the transmittal order, payment instruction, or SWIFT message, includes the following as a party in any capacity: the name of Halawi Exchange; the name of any branches, offices, or subsidiaries of Halawi Exchange; or the names of any of the principals of Halawi Exchange identified in the finding that appear as acting on behalf of Halawi Exchange. Financial institutions should be able to put these names into their existing screening programs to be easily identified and reported.

While inquiries made to the sender of an instruction to obtain additional information not originally included in a received instruction may take extra time and resources, FinCEN believes that these concerns do not outweigh the need to obtain full and accurate information concerning Halawi Exchange as quickly as possible. Note, however, that there is no expectation that a covered financial institution or principal money transmitter seek additional information from financial institutions in a chain of intermediaries beyond the immediate counter party from which the covered financial institution or principal money transmitter received the instruction. Some requests for additional information may not yield every item of additional information sought. To supplement the information received from the immediate counter party, the proposed rule would require covered financial institutions and principal money transmitters to provide any additional information that they collect in the ordinary course of business relevant to the identity of the parties involved in the transaction or attempted transaction.

(ii) Legal Capacity

Section 1010.659(b)(1)(ii) of the proposed rule would require covered financial institutions and principal money transmitters to report the legal capacity in which Halawi Exchange and any customer of Halawi Exchange is acting with respect to the transaction. This would include any identifying information collected by the covered financial institution or principal money transmitter in the ordinary course of business and must include the roles of Halawi Exchange or any of its customers in the transaction as set out in the transmittal order, such as transmittor or recipient of a transmittal order or as an intermediary financial institution involved in the payment chain associated with a transaction. The proposed rule would not require the covered financial institution or principal money transmitter to seek additional information regarding the legal capacity of the parties involved in the transaction beyond what it already has in its possession in the ordinary course of business.

(iii) Description of the Transaction or Attempted Transaction and its Purpose

Section 1010.659(b)(1)(iii) of the proposed rule would require covered financial institutions and principal money transmitters to report a description of the transaction and its purpose. The description would include additional details of the transaction, including amounts, and in particular, a general description of any underlying reason for the transaction or obligation which the financial transaction supports, such as the purchase of specific goods or services, initiation or repayment of a loan or other debt, settlement of a trade, transaction in foreign exchange, or other type of financial obligation, or other relevant information the covered financial institution or principal money transmitter may have available. To the extent a covered financial institution or principal money transmitter finds that it does not have sufficient information to enable it to report a description of the transaction and its purpose, it would be reasonable for the covered financial institution or principal money transmitter to inquire further (for example, with any applicable customer, respondent bank, or correspondent bank) to obtain additional information. In so doing, a covered financial institution or principal money transmitter should consider analogizing to procedures it would follow in fulfilling its obligation to determine whether a transaction should be reported as suspicious, in particular to aid it in examining the available facts, including the background and possible purpose of the transaction to determine whether it is consistent with the type of transaction in which a particular person would normally be expected to engage.

2. When To File

Section 1010.659(b)(2) of the proposed rule would require covered financial institutions and principal money transmitters to make the reports required by Section 1010.659(b)(1) within fifteen business days following the day when the covered financial institution or principal money transmitter engaged in or a decision was made not to engage in the transaction. By ensuring that FinCEN receives information shortly after a transaction is executed or refused to be executed, the contemplated time period will enable FinCEN and law enforcement to more effectively monitor the ongoing activities of Halawi Exchange. Based on other time limits contained in the BSA, FinCEN believes the fifteen days allowed by this proposed rule should be sufficient to make the required reports, but acknowledges that in some cases where requests must be made of foreign financial institutions additional time may be required. In such a case, the reports should be filed within fifteen days with whatever information the covered financial institution or principal money transmitter has at that time, and any additional information discovered must be submitted as a supplemental or corrected report. FinCEN requests comment on whether fifteen days is sufficient time for a covered financial institution or principal money transmitter to obtain the required information or whether some other period of time is more appropriate.

Covered financial institutions and principal money transmitters would additionally be required to take reasonable steps to identify any reportable transaction, involving Halawi Exchange, to the extent that such use can be determined from transactional records maintained in the ordinary course of business. For example, a covered financial institution or principal money transmitter would be expected to apply an appropriate screening mechanism to be able to identify a transmittal order that on its face listed Halawi Exchange as the originator's or beneficiary's financial institution, or otherwise referenced Halawi Exchange in a manner detectable under the financial institution's normal screening mechanism. An appropriate screening mechanism could be the mechanism used by a covered financial institution or principal money transmitter to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC. Willful failure to provide timely, accurate, and complete information in such reporting may constitute a violation of these requirements subject to civil and criminal penalties under 31 U.S.C. 5321 and 5322.

FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions and principal money transmitters take reasonable steps to screen their transactions to identify any transaction or attempted transaction involving Halawi Exchange.

3. How To File

The proposed rule would require covered financial institutions and principal money transmitters to report in a CSV file such information as determined by the Director of FinCEN as relevant to the identity of the participants, their legal capacity, and description of the transaction. This information could include the following requested information contained in the Order: Transaction Reference Number, Payment Date, Instruction Date, Payment Amount, Transmitter's Account Number, Transmittors's Full Name, Transmittors's Address, Transmittor's Financial Institution's Identifier, Transmittor's Financial Institution's Name, Transmittor's Financial Institution's Address, Incoming Correspondent Financial Institution's Identifier, Incoming Correspondent Financial Institution's Name, Incoming Correspondent Financial Institution's Address, Outgoing Correspondent Financial Institution's Identifier, Outgoing Correspondent Financial Institution's Name, Outgoing Correspondent Financial Institution's Address, Recipient's Financial Institution's Identifier, Recipient's Financial Institution's Name, Recipient's Financial Institution's Address, Recipient's Account Number, Recipient's Full Name, Recipient's Address, Payment Instructions. Covered financial institutions and principal money transmitters would be required to submit the CSV file in a manner specified by the Director of FinCEN. To ease regulatory burden and as appropriate, the proposal would deem reports filed as BSA–SARs to comply with this reporting requirement if filed within 15 days with all required information included in an attached CSV file and containing, both in the narrative and field 35z, "Halawi Exchange SM1 Report". FinCEN specifically solicits comments on the requirements for reporting under the proposed rule.

C. 1010.659(c)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions

1. Prohibition on Use of Correspondent Accounts

Section 1010.659(c)(1) of the proposed rule imposing the fifth special measure would prohibit covered financial institutions from establishing, maintaining, or managing in the United States any correspondent account for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Halawi Exchange, including any of its branches, offices or subsidiaries.

2. Special Due Diligence for Correspondent Accounts To Prohibit Use

As a corollary to the prohibition on maintaining correspondent accounts that processed transactions involving Halawi Exchange, section 1010.659(c)(2) of the proposed rule would require a covered financial institution to apply special due diligence to its correspondent accounts that is reasonably designed to guard against processing transactions involving Halawi Exchange. That special due diligence must include notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Halawi Exchange that such correspondents may not provide Halawi Exchange with access to the correspondent account maintained at the covered financial institution and implementing appropriate risk-based procedures to identify transactions involving Halawi Exchange.

A covered financial institution may satisfy the notification requirement by transmitting the following notice to its foreign correspondent account holders that it knows or has reason to know provide services to Halawi Exchange:

> Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 1010.659, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for or on behalf of a foreign banking institution if such correspondent account processes any transaction involving Halawi Exchange Co. or any of its subsidiaries. The regulations also require us to notify you that you may not provide Halawi Exchange Co. or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Halawi Exchange Co. or any of its subsidiaries, we will be required to take appropriate steps to prevent such access, including terminating your account.

A covered financial institution would, for example, have knowledge through transaction screening software that the correspondents provide Halawi Exchange access to the U.S. correspondent account. The purpose of the notice requirement is to help ensure cooperation from correspondent account holders in denying Halawi Exchange access to the U.S. financial system. However, FinCEN would not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement. Methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or email. FinCEN specifically solicits comments on the form and scope of the notice that would be required under the rule.

The special due diligence would also include implementing risk-based procedures designed to identify any use of its correspondent accounts to process transactions involving Halawi Exchange. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Halawi Exchange as the financial institution of the originator or beneficiary, or otherwise referenced Halawi Exchange in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

A covered financial institution would also be required to implement risk-based procedures to identify disguised use of its correspondent accounts including through methods used to hide the beneficial owner of a transaction. Specifically, FinCEN is concerned that Halawi Exchange may attempt to disguise its transactions by relying on types of payments and accounts that would not explicitly identify Halawi Exchange as an involved party. A financial institution may develop a suspicion of such misuse based on other information in its possession, patterns of transactions, or any other method available to it based on its existing systems. Under the proposed rule, a covered financial institution that suspects or has reason to suspect use of a correspondent account to process transactions involving Halawi Exchange must take all appropriate steps to attempt to verify and prevent such use, including a notification to its correspondent account holder per section 1010.659(c)(2)(i)(A) requesting further information regarding a transaction, requesting corrective action to address the perceived risk and, where necessary, terminating the correspondent account. A covered financial institution may reestablish an account closed under the rule if it determines that the account will not be used to process transactions involving Halawi Exchange. FinCEN specifically

solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to prevent any processing of transactions involving Halawi Exchange.

3. Recordkeeping and Reporting

Section 1010.659(c)(3) of the proposed rule would clarify that subsection (c) of the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Halawi Exchange that such correspondents may not process any transaction involving Halawi Exchange through the correspondent account maintained at the covered financial institution.

IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to impose the first and fifth special measures against Halawi Exchange and specifically invites comments on the following matters:

1. The impact of the proposed special measures upon legitimate transactions with Halawi Exchange involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business with persons or entities operating in Lebanon.

First Special Measure

2. The form and scope of the reports to FinCEN required under the proposed rule to impose the first special measure;

3. The appropriate time within which a financial institution would be required to report to FinCEN;

4. The requirements for reporting under the proposed rule.

5. The appropriate scope of the proposed requirement for a financial institution to take reasonable steps to identify any reportable transactions by Halawi Exchange; and

6. The appropriate steps a financial institution should take once it identifies a transaction related to Halawi Exchange.

Fifth Special Measure

7. The form and scope of the notice to certain correspondent account holders that would be required under the rule;

8. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any use of its correspondent accounts to process transactions involving Halawi Exchange; and

9. The appropriate steps a covered financial institution should take once it identifies use of one of its correspondent accounts to process transactions involving Halawi Exchange.

V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act ("RFA") requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

A. Proposal To Require a Report of a Transaction or Attempted Transaction Under the First Special Measure

1. Estimate of the Number of Small Entities to Whom the Proposed Rule Will Apply

The reporting requirement proposed under the first special measure, requires certain covered financial institutions and principal money transmitters to report to FinCEN information associated with transactions or attempted transactions involving Halawi Exchange.

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175 million in assets.[5] Of the estimated 8,000 banks, 80% have less than $175 million in assets and are considered small entities.[6] Of the estimated 7,000 credit unions, 90% have less than $175 million in assets.[7] FinCEN estimates that this rule will impact a limited number of banks and credit unions. On the basis of publicly available information, FinCEN understands that Halawi Exchange currently maintains no accounts in the United States. Moreover, to the extent that a transaction involving Halawi Exchange was to be processed through a U.S. financial institution, this would most likely involve a small subset of the largest financial institutions that actively engage in international transactions. Therefore, FinCEN estimates that this reporting requirement will only impact less than 1% of all small banks and credit unions.

Broker-dealers are defined in 31 CFR 1010.100(h) as certain broker/dealers required to register with the Securities and Exchange Commission ("SEC"). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the Small Business Administration ("SBA"). The SEC has defined the term "small entity" to mean a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release."[8] Currently, based on SEC estimates, there 18% of broker-dealers are classified as "small" entities for purposes of the RFA.[9] Because of the limited number of relationships that Halawi Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small broker-dealers.

Futures commission merchants ("FCMs") are defined in 31 CFR 1010.100(x) as those FCMs required to register with the Commodity Futures Trading Commission ("CFTC"). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's "Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act," the CFTC

[5] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Small Business Administration Size Standards at 27 (SBA Oct. 1, 2012) [hereinafter *SBA Size Standards*].

[6] Federal Deposit Insurance Corporation, *Find an Institution, http://www2.fdic.gov/idasp/main.asp; select* Size or Performance: Total Assets, *type* Equal or less than $: "175000", *select* Find.

[7] National Credit Union Administration. *Credit Union Data, http://webapps.ncua.gov/customquery/ ; select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: "175000000", *select* Go.

[8] 17 CFR 240.0–10(c).

[9] 76 FR 37572, 37602 (June 27, 2011) (The SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.[10] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC. Therefore, the reporting requirements of the first special measure will not impact small FCMs.

For purposes of the RFA, an introducing broker-commodities is considered small if it has less than seven million dollars in gross receipts annually.[11] Based on NAICS code classification and information maintained by the CFTC, FinCEN estimates that there are 1,800 introducing brokers-commodities,[12] 80% of which are small entities.[13] Because of the limited number of relationships that Halawi Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small introducing brokers-commodities.

For purposes of the RFA, a mutual fund is considered small if it has less than seven million dollars in gross receipts annually.[14] Based on NAICS code classification and information maintained by the Investment Company Institute, FinCEN estimates that there are 8,700 mutual funds,[15] 90% of which are small entities.[16] Because of the limited number of relationships that Halawi Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small mutual funds.

For the purposes of the RFA, a money transmitter is considered small if it has less than seven million dollars in gross receipts annually. Of the estimated 17,000 principal money transmitters, FinCEN estimates 95% have less than seven million in gross receipts annually.[17] As indicated above, the reporting required by the first special measure will impact a small subset of the largest money transmitters. FinCEN estimates that the reporting required by the first special measure will impact less than 1% of small money transmitters Therefore, FinCEN has determined that neither a substantial number of small banks nor money transmitters will be significantly impacted by the proposal to require reporting under the first special measure.

2. Description of the Projected Reporting and Recordkeeping Requirements of the First Special Measure

Covered financial institutions and principal money transmitters at which a transaction is conducted or attempted by Halawi Exchange will be required to report information to FinCEN in a CSV file. Covered financial institutions and principal money transmitters would be able to rely on processes already developed to comply with suspicious activity reporting and commercially available software used to comply with the economic sanctions programs administered by OFAC, which can be leveraged to monitor for and report transactions involving Halawi Exchange. To ease regulatory burden and as appropriate, the proposal would deem reports filed as BSA–SARs to comply with this reporting requirement if filed within 15 days with all required information included in an attached CSV file and containing both in the narrative and field 35z "Halawi Exchange SM1 Report." Because Halawi Exchange has been found to be a primary money laundering concern with links to terrorist financing, there will be significant overlap between the information that will be reported to satisfy the first special measure and the long standing requirement to file a BSA–SAR. Therefore, as the form of the reporting is structured to allow covered financial institutions and principal money transmitters to satisfy pre-existing regulatory obligations, any increase in the reporting burden that would be required by the imposition of the first special measure—*i.e.*, reporting of all transactions involving Halawi Exchange on a timelier basis—would not impose a significant additional economic burden upon small U.S. financial institutions.

B. Proposal To Prohibit Covered Financial Institutions from Opening or Maintaining Correspondent Accounts With Certain Foreign Banks Under the Fifth Special Measure

1. Estimate of the Number of Small Entities to Whom the Proposed Fifth Special Measure Will Apply

As noted above, 80% of banks, 90% of credit unions, 18% of broker-dealers, 80% of introducing brokers-commodities, zero FCMs, and 90% of mutual funds are small entities. FinCEN understands that Halawi Exchange currently maintains no accounts in the United States. The limited number of foreign banking institutions with which Halawi Exchange maintains or will maintain accounts will likely limit the number of covered financial institutions to the largest U.S. banks who actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions which engage in transactions involving Halawi Exchange under the fifth special measure would not impact a substantial number of small entities.

2. Description of the Projected Reporting and Recordkeeping Requirements of the Fifth Special Measure

The proposed fifth special measure will require covered financial institutions to provide a notification intended to ensure cooperation from correspondent account holders in denying Halawi Exchange access to the U.S. financial system. FinCEN estimates that burden on institutions providing this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to directly or indirectly process transactions involving Halawi Exchange. All U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC sanctions and suspicious activity reporting. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banking institutions involving Halawi Exchange. Thus, the special due diligence that would be required by the imposition of the fifth special measure—*i.e.*, the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures

[10] 47 FR 18618, 18619 (Apr. 30, 1982).

[11] SBA Size Standards at 28.

[12] 77 FR 20128, 20197 (Apr. 3, 2012).

[13] 2007 Economic Census, *Finance and Insurance: Subject Series—Estab and Firm Size: Summary Statistics by Revenue Size of Establishments for the United States: 2007* (Introducing brokers-commodities are classified within NAICS code 523140 of which 80% are small).

[14] SBA Size Standards at 28.

[15] Investment Company Institute (ICI) 2012 *Investment Company Fact Book*, at 18 (2012), available at: *http://www.icifactbook.org/pdf/2012_factbook.pdf* (Number of mutual funds in the United States in 2011).

[16] 2007 Economic Census, *Finance and Insurance: Subject Series—Estab and Firm Size: Summary Statistics by Revenue Size of Establishments for the United States: 2007* (Mutual funds are classified within NAICS code 523120 of which 90% are small).

[17] *See* FinCEN *MSB Registration List (3/08/2012), http://www.fincen.gov/financial_institutions/msb/msbstateselector.html* (Sort list by entities that engage in money transmission and remove repeat registrations).

to detect indirect use of correspondent accounts—would not impose a significant additional economic burden upon small U.S. financial institutions.

C. Certification

When viewed as a whole, FinCEN does not anticipate that the proposals contained in this rulemaking will have a significant impact on a substantial number of small businesses. Accordingly, FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities from the imposition of the first and fifth special measures regarding Halawi Exchange.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by email to *oira submission@omb.eop.gov* with a copy to FinCEN by mail or email at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by June 24, 2013. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.659 is presented to assist those persons wishing to comment on the information collection.

A. Proposed Information Collection Under the First Special Measure

The provisions in this proposed rule pertaining to the collection of information can be found in sections 1010.659(b)(1). The information required to be reported section 1010.659(b)(1) will be used by the U.S. Government to monitor the activities of the institution of primary money laundering concern. The proposed collection of information will be collected as a separate information collection under previously approved OMB Control Number 1506–0065. The collection of information is mandatory. FinCEN estimates the total annual burden of this collection to be 500 hours.

B. Proposed Information Collection Under the Fifth Special Measure

The notification requirement in section 1010.659(c)(2)(i) is intended to ensure cooperation from correspondent account holders in denying Halawi Exchange access to the U.S. financial system. The information required to be maintained by section 1010.659(c)(3)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.659. The class of financial institutions affected by the notification requirement is identical to the class of financial institutions affected by the recordkeeping requirement. The collection of information is mandatory.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, and mutual funds.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden in Hours Per Affected Financial Institution: The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

VII. Executive Order 12866

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, banks and banking, brokers, counter-money laundering, counter-terrorism, foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332 Title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Add § 1010.659 to subpart F to read as follows:

§ 1010.659 Special measures against Halawi Exchange Co.

(a) *Definitions.* For purposes of this section:

(1) *Halawi Exchange Co.* means all branches, offices, and subsidiaries of Halawi Exchange Co. operating in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(1).

(4) *Principal Money Transmitter* means a money transmitter required to register under § 1022.380 of this Chapter.

(5) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Reporting requirements for covered financial institutions and principal money transmitters.* (1) *Reporting.* A covered financial institution or principal money transmitter is required to take reasonable steps to collect and report to FinCEN the following information with respect to any transaction or attempted transaction involving Halawi Exchange Co.:

(i) The identity and address of the participants in the transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;

(ii) The legal capacity in which Halawi Exchange Co. is acting with respect to the transaction or attempted transaction and, to the extent Halawi Exchange Co. is not acting on its own behalf, the customer or other person on whose behalf Halawi Exchange Co. or is acting; and

(iii) A description of the transaction or attempted transaction and its purpose.

(2) *When to file.* A report required by this paragraph (b) shall be filed by the reporting financial institution within fifteen business days following the day when the covered financial institution or principal money transmitter engaged in the transaction or became aware of an attempted transaction.

(3) *How to file.* A report required by this paragraph (b) shall be filed electronically in a comma separate value format in a manner determined by the Director of FinCEN. However, if a covered financial institution or principal money transmitter determines the reportable transaction to be suspicious, filing FinCEN Form 111 within 15 days with all required information included in an attached comma separated value file and containing both in the narrative and field 35z the text "Halawi Exchange SM1 Report" will be deemed to comply with this requirement.

(c) *Prohibition on accounts and due diligence requirements for covered financial institutions.* (1) *Prohibition on use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a foreign banking institution if such correspondent account is being used to process a transaction that involves Halawi Exchange Co.

(2) *Special due diligence of correspondent accounts to prohibit use.* (i) A covered financial institution shall apply special due diligence to its correspondent accounts that is reasonably designed to guard against their use to process transactions involving Halawi Exchange Co. At a minimum, that special due diligence must include:

(A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to Halawi Exchange Co., that such correspondents may not provide Halawi Exchange Co. with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its correspondent accounts by Halawi Exchange Co., to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its correspondent accounts to process transactions involving Halawi Exchange Co.

(iii) A covered financial institution that obtains knowledge that a correspondent account may be being used to process transactions involving Halawi Exchange Co., shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) of this section and, where necessary, terminating the correspondent account.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this paragraph (c) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: April 20, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2013–09784 Filed 4–23–13; 11:15 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Notice of Finding That Kassem Rmeiti & Co. For Exchange Is a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Treasury ("FinCEN").

ACTION: Notice of finding.

SUMMARY: This document provides notice that the Director of FinCEN found on April 22, 2013, that reasonable grounds exist for concluding that Kassem Rmeiti & Co. For Exchange ("Rmeiti Exchange") is a financial institution operating outside the United States that is of primary money laundering concern.

DATES: The finding referred to in this notice was effective as of April 22, 2013.

FOR FURTHER INFORMATION CONTACT: FinCEN, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the "Secretary") to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act ("Section 311"), codified at 31 U.S.C. 5318A of the BSA, grants the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transaction, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" to address the primary money laundering concern.

II. The Extent To Which Kassem Rmeiti & Co. For Exchange Is Used for Legitimate Business Purposes in Lebanon

A. Kassem Rmeiti & Co. For Exchange

Kassem Rmeiti & Co. For Exchange ("Rmeiti Exchange") is a Lebanon-based money exchanger with branches and affiliates in Switzerland and Benin. Rmeiti Exchange, through its owner, Kassem Rmeiti,[1] also owns companies including, but not limited to, the Rmaiti Group SAL in Lebanon and Societe Rmaiti SARL (STE Rmeiti) located in Benin. For the purpose of this document and unless expressly stated otherwise, references to Rmeiti Exchange include the aforementioned companies, collectively the "Rmeiti Exchange companies." Rmeiti Exchange uses accounts held at foreign banks that maintain correspondent relationships with U.S. financial institutions to gain access to the U.S. financial system. Between 2008 and 2011, Rmeiti Exchange transferred at least $27 million to U.S. car dealers from foreign bank accounts.

Rmeiti Exchange offers a variety of financial services, primarily currency exchange and transmission of funds. Available information suggests that Rmeiti Exchange, in addition to the activities of concern discussed below, engages in other, unremarkable transactions of a type, volume, and variety typical of Lebanese exchange houses. If these services were offered to U.S. customers and if they took place wholly or substantially in the United States, Rmeiti Exchange would be treated as a money services business under the BSA, a type of financial institution defined at 31 CFR 1010.100(t)(3). Specifically, it offers services that would be defined as money transmission and dealing in foreign exchange, activities defined at 31 CFR 1010.100(ff).

B. Lebanon

Lebanon is a financial hub for banking activities in the Middle East and eastern Mediterranean and has a sophisticated banking sector.[2] There are 72 banks operating in Lebanon,[3] and all major banks have correspondent relationships with U.S. financial institutions. The five largest commercial banks account for an estimated 61% of total banking assets for the country, which are estimated at $95 billion.[4] The government retains no direct ownership of any commercial banks.[5] Despite slowed economic growth following domestic political instability and regional turmoil in 2011, Lebanon's banking sector continues to rely on significant capital inflows from the Lebanese diaspora community,[6] which has been a large contributor to banking sector liquidity and capitalization, estimated by the World Bank at $7.6 billion—18% of GDP—in 2011.[7] Banks' exposure to the heavily-indebted sovereign, with total government debt projected at 132% of GDP in 2012, remains a significant risk to stability and growth of the financial sector.[8]

Money exchange businesses became a major feature of Lebanon's financial sector during the Lebanese civil war and have played a key role in providing services such as international funds transfers, currency conversion, and payments and deposits for domestic and expatriate Lebanese clientele since 1990. In 2001, Lebanon's Central Bank, Banque du Liban ("BdL"), published a set of circulars expanding regulations for exchange houses operating in the country.[9] Since the enactment of the 2001 law, 732 money exchange businesses have registered with BdL, and currently there are 374 active

[1] Alternative spellings of individual and business names: Kassem, Kasem, Keassem, Kassim, Kasim, Qasim, Qasem, Qassem; Rmeiti, Rmeiti, Rmeitey Rmaiti, Rmaity, Rmaitey, Rmayty, Rmayti, Rmaytey, Rmeyti, Rmeyty, Rmeytey, Remeity, Remaity, Remayty, Remeyty, Rameiti, Ramayti, Rameyti, Ramaiti, Romeiti, Romeyti, Romayti, Romaiti, Rmaitti, Rmeitti, Rmaytti, Rmeytti; Rmaiti For Exchange Co.

[2] "2012 International Narcotics Control Strategy Report ('INCSR')," Bureau of International Narcotics and Law Enforcement Affairs, The Department of State, March 7, 2012 *www.state.gov/g/inl/rls/nrcrpt/2010/vol2/137212.htm*).

[3] "Complete List of Operating Banks in Lebanon," Banque du Liban (*www.bdl.gov.lb*). *www.bdl.gov.lb/bfs/CB/index.htm* as of 1/30/2013.

[4] Estimated from values in the "2012 Investment Climate Statement—Lebanon," Bureau of Economic and Business Affairs, June 2012 Report. *www.state.gov/e/eb/rls/othr/ics/2012/191182.htm*.

[5] "2012 Index of Economic Freedom," The Heritage Foundation. *http://www.heritage.org/index/country/lebanon*.

[6] "2012 Investment Climate Statement—Lebanon," Bureau of Economic and Business Affairs, The Department of State, June 2012 Report. *www.state.gov/e/eb/rls/othr/ics/2012/191182.htm*.

[7] The latest available World Bank data estimated in November 2012 that remittances were $7.6bn for 2012. "Remittances Data: Inflows," Migration and Remittances, The World Bank, November 2012. *http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:21121930~menuPK:3145470~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html*.

[8] "IMF Executive Board Concludes 2011 Article IV Consultation with Lebanon" Public Information Notice (PIN) No. 12/11, "International Monetary Fund, February 8, 2012. *http://www.imf.org/external/np/sec/pn/2012/pn1211.htm*.

[9] BdL, Law 347 Regulating the Money Changer Profession in Lebanon, August 6, 2001.

licensed businesses.[10] Each of these active licensed businesses must process payments through business accounts established in Lebanese banks.[11]

Lebanon also faces money laundering and terrorist financing vulnerabilities [12] due to weaknesses in its Anti-Money Laundering/Combating the Financing of Terrorism ("AML/CFT") regime, porous borders, ineffective and inconsistent regulation, and a challenging and complex domestic and regional political and security environment, among other factors. Of concern is the possibility that a portion of the substantial flow of remittances could be associated with trade-based money laundering and other illicit finance activities. For example, Lebanon imposes currency reporting requirements on banks and money exchange businesses that undertake cross-border cash and precious metal activity,[13] but has no corresponding cross-border declaration requirement for the public at Lebanese points of entry, resulting in a significant cash-smuggling vulnerability.

These vulnerabilities have been recently exploited to support trade-based money laundering. FinCEN identified Lebanese Canadian Bank ("LCB") as an institution of primary money laundering concern in February 2011 (the "LCB 311 Action"),[14] which was preceded by the Office of Foreign Assets Control's ("OFAC's") designation of Lebanese Ayman Joumaa as a Specially Designated Narcotics Trafficker ("SDNT"), as well as of three Lebanon-based money exchange businesses used by Ayman Joumaa and his organization to launder illicit proceeds, Elissa Exchange Company, Hassan Ayash Exchange, and New Line Exchange Trust Co., under the Foreign Narcotics Kingpin Designation Act in January 2011.[15] In the LCB 311 Action, FinCEN determined that LCB was facilitating the money laundering activities of the Joumaa drug trafficking and money laundering network. This network moved illegal drugs from South America to Europe and the Middle East via West Africa and laundered hundreds of millions of dollars monthly through accounts held at LCB, as well as through trade-based money laundering involving consumer goods throughout the world, including through used car dealerships in the United States. Further, the LCB 311 Action exposed the terrorist organization Hizballah's links to LCB and the fact that Hizballah derived financial support from criminal activities of Joumaa's network.

Following these Treasury actions, two U.S. Attorney's Offices took actions against Ayman Joumaa, Elissa Exchange, and Hassan Ayash Exchange. In December 2011, a grand jury in the Eastern District of Virginia returned an indictment against Ayman Joumaa for conspiracy to distribute narcotics and conspiracy to commit money laundering related to drug trafficking by Mexican and Colombian drug cartels.[16] In August 2012, the U.S. Attorney's Office for the Southern District of New York ("SDNY") seized $150 million as part of a civil money laundering and forfeiture action against Hizballah-linked LCB, Elissa Exchange, and Hassan Ayash Exchange based on money laundering schemes involving Ayman Joumaa, the exchange houses, and U.S. car dealers.[17] The "SDNY Complaint" listed, by name, 30 U.S. car dealers and a U.S. shipping company that facilitated the scheme.

BdL re-evaluated AML/CFT regulations regarding money exchange businesses following the Treasury actions. In May and August 2011, BdL revised Lebanon's AML/CFT regulations regarding supervised banks and other non-bank financial institutions by publishing seven decisions [18] modifying Law 347 (dated August 6, 2001). BdL required all of these active licensed money exchangers to maintain business accounts at a formal financial institution, such as a registered Lebanese bank subject to BdL supervision, and prohibited exchangers from operating accounts at Lebanese banks on behalf of their clients.[19]

Despite some improvements to its financial sector supervision, Lebanon still has not acceded to the UN Convention for the Suppression of the Financing of Terrorism. And Hizballah, an organization which the United States designated as a Foreign Terrorist Organization in October 1997 and a Specially Designated Global Terrorist under Executive Order 13224 in October 2001,[20] is a recognized political party with an active role in the Lebanese government. Though it has adopted laws domestically criminalizing any funds resulting from the financing, or contributing to the financing, of terrorism,[21] the active participatory role of a designated terrorist group in the Lebanese government and civil society calls into question the broader efficacy of Lebanon's AML/CFT regime.

III. The Extent to Which Rmeiti Exchange Has Been Used To Facilitate or Promote Money Laundering in or Through Lebanon

In finding that Rmeiti Exchange is a financial institution of primary money laundering concern, FinCEN reviewed the extent to which Rmeiti Exchange facilitates or promotes money laundering and determined that Rmeiti Exchange, its ownership, management, and associates are involved in illicit activity that includes the same trade-based money laundering activities conducted by U.S.-designated narcotics kingpin Ali Mohamed Kharroubi and Elissa Exchange, facilitate money laundering by other Lebanese exchanges on behalf of drug traffickers, and provide financial services to Hizballah.

A. Rmeiti Exchange Engages in Trade-Based Money Laundering for U.S.-Designated Narcotics Kingpin Ali Mohamed Kharroubi and Elissa Exchange

According to information available to the U.S. Government, Rmeiti Exchange engages in auto sale-related financial transactions working with SDNT Ali Mohamed Kharroubi to send funds to U.S. auto dealers as part of a trade-based money laundering scheme. Before and after the January 2011 Treasury designation of Ali Mohamed Kharroubi and Elissa Exchange and FinCEN's Section 311 Action against LCB which

[10] BdL, List of Exchange Institutions, May 2012, *http://www.bdl.gov.lb/bfs/MS/Money_Dealers_orabic.pdf.*

[11] BdL, Intermediate BdL Circular 264, dated May 21, 2011, pages 3–4, *http://www.bdl.gov.lb/circ/intpdf/int264_en.pdf.*

[12] 2012 INCSR.

[13] Special Investigation Commission, Intermediate BdL Circular 263, dated May 21, 2011, *http://www.sic.gov.lb/circulor263.shtml.*

[14] FinCEN, *Finding That the Lebonese Canadian Bank SAL Is o Finonciol Institution of Primary Money Laundering Concern*, 76 FR 9403, dated February 17, 2011, *http://www.gpo.gov/fdsys/pkg/FR-2011-02-17/pdf/2011-3346.pdf.*

[15] Additions to OFAC's SDN list, dated January 26, 2011, *http://www.treasury.gov/resource-center/sonctions/OFAC-Enforcement/Poges/20110126.ospx*

[16] The United States Attorney's Office for the Eastern District of Virginia Press Release, "U.S. Charges Alleged Lebanese Drug Kingpin With Laundering Drug Proceeds For Mexican And Colombian Drug Cartels" December 13, 2011, *http://www.justice.gov/usao/vae/news/2011/12/20111213joumaonr.html.*

[17] The United States Attorney's Office for the Southern District of New York press release and civil complaint.

[18] In May 2011 Intermediate Decisions 10725, 10726 and 10728 and in August 2011 Intermediate Decisions 10787, 10789, 10791, and 10792 were published regarding AML/CFT regulations of exchange businesses.

[19] BdL, Intermediate BdL Circular 264, dated May 21, 2011, pages 3–4, *http://www.bdl.gov.lb/circ/intpdf/int264_en.pdf.*

[20] Hizballah is a Lebanon-based terrorist group. Until September 11, 2001, Hizballah was responsible for more American deaths than any other terrorist organization.

[21] For additional information about Lebanon's legal framework and special mechanisms for anti-money laundering and terrorist financing measures, see The Middle East and North Africa Financial Task Force (MENAFATF) *Mutual Evaluotion Report, Lebanese Republic*, November 10, 2009 (*www.menofotf.org*).

exposed the use of LCB accounts by Kharroubi and his company, Elissa Exchange, to launder drug proceeds for the Joumaa drug trafficking organization through the purchase and export of used cars from the United States. Rmeiti Exchange and its management processed structured, regular, round-number, large-denomination international wire transfers for the purchase of vehicles in the United States. The funds often originated from unknown individuals in high-risk money laundering regions and were sent to auto auction companies and used car dealers, some of which have no physical presence or verifiable address.

1. Rmeiti Exchange Engages in Trade-Based Money Laundering Activity With Narcotics Traffickers

Rmeiti Exchange and its management facilitate extensive transactions for known money launderers and drug traffickers. Prior to Treasury's Kingpin designation and FinCEN's LCB 311 Action, Kassem Rmeiti, through Rmeiti Exchange, routinely processed structured international wire transfers from its accounts at LCB and other banks to many of the same U.S.-based car dealerships that received funds from Elissa Exchange and were subsequently named in the SDNY Complaint as participants in the Joumaa network's money laundering scheme. In fact, between 2008 and March 2011, Rmeiti Exchange and its owner, provided at least $25 million in large, round dollar, and repetitive payments to U.S.-based car dealers and exporters, including more than $22 million from accounts it held at LCB. Many of the used car dealers that received payments from Rmeiti Exchange were later named in the SDNY Complaint for receiving funds from the Joumaa network.

2. Rmeiti Exchange Engages in Trade-Based Money Laundering Activity With Individuals the U.S. Government Has Designated as Narcotics Traffickers

After SDNT Ali Mohamed Kharroubi's network was exposed in the Treasury and Department of Justice actions, the network adapted its business practices and utilized other exchange houses which they could control or otherwise use to continue sending funds to used car dealerships in the United States, in particular Rmeiti Exchange. After the LCB 311 Action in February 2011, Rmeiti Exchange companies continued to make structured international wire payments to U.S. car dealers and companies for car purchases in a manner representative of trade-based money laundering, and a Rmeiti Exchange company was specifically used to facilitate such payments on behalf of Treasury-designated narcotics trafficker Ali Kharroubi. According to U.S. Government information, in February 2011 Ali Mohamed Kharroubi directed Kassem Rmeiti to create the Trading African Group (TAG) in Benin so that Kharroubi could continue making international wire transfers for U.S. car purchases that avoided U.S. Government scrutiny. Further, by the fall of 2011, former Elissa Exchange employees were working for TAG, and Kassem Rmeiti was paying Kharroubi about 30–40% of TAG's profits.

TAG provided more than $1.7 million to U.S. car dealers and exporters between March and October 2011. These payments consisted of structured, regular, large-denomination international wire payments in a manner representative of trade-based money laundering, and included at least one U.S. car dealer named in the SDNY Complaint as receiving car purchase payments from Elissa Exchange as part of the money laundering scheme alleged in the Complaint. The U.S. car dealers also received multiple wire transfers from individuals and businesses in regions considered high-risk for trade-based money laundering, which funded purchases of cars that were then shipped to Lebanon and likely Benin. The sources of some funds were unknown, and the recipients had addresses that could not be verified or appeared to be a residence.

3. Following U.S. Government Actions in 2011, Rmeiti Exchange Adapted Its Trade-Based Money Laundering Activity To Conduct Transactions Through Rmeiti's Other Businesses, Especially World Car Service LTD

Kassem Rmeiti also serves as a board member or executive and represents himself as the owner of World Car Service LTD, a.k.a., World Car Service AG, (WCS AG)—an international transport and shipping business located in Switzerland, which is believed to be an affiliate of World Car Service International Transport and Shipping Company (a.k.a., WCS SA) located in Benin. Between March 2011 and August 2012, WCS SA in Benin processed numerous international wire transfers totaling over $100,000 and referencing auto purchases or vehicles to U.S.-based individuals and businesses and one other individual involved in auto exports or sales. From 2011 to 2012, WCS SA in Benin provided over $2.2 million in large, round-dollar wire transfers to numerous U.S. car dealers and car exporters, one of which was named in the 2011 SDNY Complaint, and many of which had previously received over $2 million in dozens of large, round-dollar wire transfers from Rmeiti Exchange or TAG between early 2007 and mid-2011. This pattern of activity indicates that in 2011 Rmeiti shifted some transactions away from his exchange companies and TAG and began increasingly utilizing his WCS accounts for trade-based money laundering transactions with the same entities through 2012.

Additionally, Kassem Rmeiti has engaged in commingling of over $2.5 million among his several businesses, including WCS SA, WCS AG, STE Rmaiti SARL, and Kassem Rmeiti and Co. For Exchange between 2009 and 2012, which is consistent with money laundering indicators and techniques.

B. Rmeiti Exchange Facilitates or Promotes Money Laundering Activity With or on Behalf of Other Money Launderers and Drug Trafficking Organizations

In addition to involvement in the trade-based money laundering activities described above, Rmeiti Exchange and its management have conducted financial activities for other money laundering and drug trafficking organizations operating in both Europe and Africa. Between March 2011 and October 2012, Rmeiti Exchange, its management, and employees facilitated the movement of at least $1.7 million for known or suspected Beninoise and Lebanese money launderers and drug traffickers. This included Rmeiti Exchange and Kassem Rmeiti taking on large cash deposits, collection of bulk cash currency, issuance of cashier's checks, and facilitation of cross-border wire transfers on behalf of known and suspected money launderers, drug traffickers, and Hizballah affiliates.

1. Rmeiti Exchange Facilitates Payments for a Money Launderer Known To Be Affiliated With a Colombian Drug Trafficking Organization

Since at least 2010, Rmeiti Exchange has transferred funds on behalf of known or suspected money launderers and shared its office space and security resources as part of a large-scale money laundering scheme that involves the purchase and sale of used cars in the United States for export to West Africa. For example, following the seizure of over 8.7 million euro by European authorities related to a Colombian drug trafficking ring that imported cocaine into Europe and laundered the illicit proceeds through Lebanon and South America, a known money launderer of this organization with ties to Hizballah moved his operations to Kassem Rmeiti Exchange in the Dahieh area of Beirut.

This money launderer continued to wire large dollar amounts to U.S.-based car dealers via a Rmeiti Exchange account prior to the LCB 311 Action.

Rmeiti Exchange facilitated money laundering for other entities engaged in trade-based money laundering. Rmeiti processed over $3 million in dozens of large, round-dollar international wire transfers to two entities, whose businesses engaged in transactions typical of used-car trade-based money laundering. The two entities received over $2 million in wire transfers for car purchases from entities in high-risk trade-based money laundering regions, including through another exchange house.

2. Rmeiti Exchange Actively Seeks Money Laundering Opportunities With Other Lebanese Exchange Houses and Precious Metal Dealers

Rmeiti Exchange owner Kassem Rmeiti has also worked with other Lebanese exchange houses, including Halawi Exchange, determined to be a financial institution operating outside of the United States that is of primary money laundering concern on April 22, 2013, to facilitate money laundering activities. For example, Rmeiti Exchange, Halawi Exchange, and other exchange houses sent over $9 million in dozens of round-number, large-denomination international wire transfers from unknown sources to the same U.S. car shipping business from 2007 through 2010. Rmeiti Exchange and Halawi Exchange have facilitated financial activity on behalf of a money launderer involved in collecting illicit drug proceeds. Kassem Rmeiti has worked with a separate Lebanese exchange house to coordinate currency transfers and courier shipments on behalf of various money launderers between mid-2011 and mid-2012. Benin-based suspected money launderer Kassem Rmeiti, the owner of Rmeiti Exchange, continues to actively seek money laundering opportunities in trade transactions. For example, Rmeiti sought the assistance of a Lebanon-based money launderer in April 2012, to begin selling African gold in Lebanon or Dubai. Rmeiti Exchange and its owners' and employees' willingness to work for a variety of criminal networks involved in drug trafficking and money laundering suggests that a venture into the import or export of gold, which is a high-risk industry for money laundering, will likely provide another source to commingle illicit funds for Ali Mohamed Kharroubi and others.

C. Rmeiti Exchange Facilitates or Promotes Money Laundering for Specially Designated Global Terrorist Hizballah

Rmeiti Exchange has also conducted money laundering activities for and provided financial services to Hizballah. Rmeiti Exchange used accounts it held at LCB to deposit bulk cash shipments generated by Hizballah through illicit activity in Africa and as of December 2011, Hizballah had replaced U.S.-designated Elissa Exchange owner Ali Kharroubi with Haitham Rmeiti—the manager/owner of STE Rmeiti—as a key facilitator for wiring money and transferring Hizballah funds. Rmeiti Exchange, through its owner, Kassem Rmeiti, owns Societe Rmaiti SARL (a.k.a. STE Rmeiti). These steps taken by Hizballah demonstrate its efforts to adapt after U.S. Government disruptive action, and illustrates the need for continued action against its financial facilitators.

IV. The Extent to Which This Action Is Sufficient To Guard Against International Money Laundering and Other Financial Crimes

FinCEN's April 22, 2013 finding that Rmeiti Exchange is an institution of primary money laundering concern, along with the Special Measures proposed pursuant to the Finding and published elsewhere in this issue of the **Federal Register**, will guard against international money laundering and other financial crimes directly by restricting the ability of Rmeiti Exchange to access the U.S. financial system to process transactions, and indirectly by public notification to the international financial community of the risks posed by dealing with Rmeiti Exchange.

Dated: April 20, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2013–09783 Filed 4–23–13; 11:15 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Notice of Finding That Halawi Exchange Co. Is a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Treasury ("FinCEN").

ACTION: Notice of finding.

SUMMARY: This document provides notice that the Director of FinCEN found on April 22, 2013, that Halawi Exchange Co. ("Halawi Exchange") is a financial institution operating outside the United States that is of primary money laundering concern.

DATES: The finding referred to in this notice was effective as of April 22, 2013.

FOR FURTHER INFORMATION CONTACT: FinCEN, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the "Secretary") to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act ("Section 311"), codified at 31 U.S.C. 5318A, grants the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transaction, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" to address the primary money laundering concern.

II. The Extent to Which Halawi Exchange Is Used for Legitimate Business Purposes in Lebanon

A. Halawi Exchange

Halawi Exchange offers a variety of financial services, primarily currency exchange and transmission of funds. Halawi Exchange, along with other related entities, is organized under a holding company known as Halawi Holding SAL, which also owns several other related companies in Lebanon. The Halawi companies are based in Beirut, Lebanon, share key corporate leadership, maintain offices at the same addresses, share common phone numbers and common email addresses, and frequently reference their close connection to one another. They are also regularly displayed together on corporate signage and on public materials, one of which shows them

collectively under a banner which reads "Collaboration Under One Thumb."

Available information suggests that Halawi Exchange, in addition to the activities of concern discussed below, engages in other, unremarkable transactions of a type, volume, and variety typical of Lebanese exchange houses or brokerages. If these services were offered to U.S. customers and if they took place wholly or substantially in the United States, the Halawi Exchange would be treated as a financial institution under the BSA, defined at 31 CFR 1010.100(t)(3). Specifically, Halawi Exchange offer services that would be defined as money transmission, activities defined at 31 CFR 1010.100(ff), in addition to other services it may offer.

Halawi Exchange identifies itself as "a family business under the Halawi group." In 2012, Halawi Exchange expanded to cover five branches in Lebanon and a sister company in London under the name "Halawi Exchange Co. LTD." It lists its partners as Mahmoud Halawi and Ali Halawi who, according to Halawi Exchange, maintain "daily involvement in management and operations of the company." Halawi Exchange also advertises that it operates in the Sudan, United Arab Emirates, Saudi Arabia, Qatar, Kuwait, Bahrain, Jordan, the United Kingdom, and Australia.

Mahmoud Halawi is the sole or majority owner and senior management officer at Halawi Exchange, Halawi Holding SAL, and Halawi Investment Trust SAL. He is also President of the Money Changers Association in Lebanon. His son, Fouad Halawi, is a Director at Halawi Holding SAL and has served as a manager at Halawi Exchange.

B. Lebanon

Lebanon is a financial hub for banking activities in the Middle East and eastern Mediterranean and has a sophisticated banking sector.[1] There are 72 banks operating in Lebanon,[2] and all major banks have correspondent relationships with U.S. financial institutions. The five largest commercial banks account for an estimated 61% of total banking assets for the country, which are estimated at $95 billion.[3] The government retains no direct ownership of any commercial banks and maintains an indirect ownership stake in one bank.[4] Despite slowed economic growth following domestic political instability and regional turmoil in 2011, Lebanon's banking sector continues to rely on significant capital inflows from the Lebanese diaspora community,[5] which has been a large contributor to banking sector liquidity and capitalization, estimated by the World Bank at $7.6 billion—18% of GDP—in 2011.[6] Banks' exposure to the heavily-indebted sovereign, with total government debt projected at 132% of GDP in 2012, remains a significant risk to stability and growth of the financial sector.[7]

Money exchange businesses became a major feature of Lebanon's financial sector during the Lebanese civil war and have played a key role in providing services such as international funds transfers, currency conversion, and payments and deposits for domestic and expatriate Lebanese clientele since 1990. In 2001, Lebanon's Central Bank, Banque du Liban ("BdL"), published a set of circulars expanding regulations for exchange houses operating in the country.[8] Since the enactment of the 2001 law, 732 money exchange businesses have registered with BdL, and currently there are 374 active licensed businesses.[9] Each of these active licensed businesses must process payments through business accounts established in Lebanese banks.[10]

Lebanon also faces money laundering and terrorist financing vulnerabilities [11] due to weaknesses in its Anti-Money Laundering/Combating the Financing of Terrorism ("AML/CFT") regime, porous borders, ineffective and inconsistent regulation, and a challenging and complex domestic and regional political and security environment, among other factors. Of concern is the possibility that a portion of the substantial flow of remittances could be associated with trade-based money laundering and other illicit finance activities. For example, Lebanon imposes currency reporting requirements on banks and money exchange businesses that undertake cross-border cash and precious metal activity,[12] but has no corresponding cross-border declaration requirement for the public at Lebanese points of entry, resulting in a significant cash-smuggling vulnerability.

These vulnerabilities have been recently exploited to support trade-based money laundering. FinCEN identified Lebanese Canadian Bank ("LCB") as an institution of primary money laundering concern in February 2011 (the "LCB 311 Action"),[13] which was preceded by the Office of Foreign Assets Control's ("OFAC's") designation of Lebanese Aymań Joumaa as a Specially Designated Narcotics Trafficker ("SDNT"), as well as of three Lebanon-based money exchange businesses used by Ayman Joumaa and his organization to launder illicit proceeds, Elissa Exchange Company, Hassan Ayash Exchange, and New Line Exchange Trust Co., under the Foreign Narcotics Kingpin Act Designation in January 2011.[14] In the LCB 311 Action, FinCEN determined that LCB was facilitating the money laundering activities of the Joumaa drug trafficking and money laundering network. This network moved illegal drugs from South America to Europe and the Middle East via West Africa and laundered hundreds of millions of dollars monthly through accounts held at LCB, as well as through trade-based money laundering involving consumer goods throughout the world, including through used car dealerships in the United States. Further, the LCB 311 Action exposed the terrorist organization Hizballah's links to LCB and that Hizballah derived financial

[1] "2012 International Narcotics Control Strategy Report ('INCSR')," Bureau of International Narcotics and Law Enforcement Affairs, The Department of State, March 7, 2012, *www.state.gov/g/inl/rls/nrcrpt/2010/vol2/137212.htm*).

[2] "Complete List of Operating Banks in Lebanon," Banque du Liban (*www.bdl.gov.lb*). *www.bdl.gov.lb/bfs/CB/index.htm* as of 1/30/2013.

[3] Estimated from values in the "2012 Investment Climate Statement—Lebanon," Bureau of Economic and Business Affairs, June 2012 Report. *www.state.gov/e/eb/rls/othr/ics/2012/191182.htm*.

[4] "2012 Index of Economic Freedom," The Heritage Foundation. *http://www.heritage.org/index/country/lebanon*.

[5] "2012 Investment Climate Statement—Lebanon," Bureau of Economic and Business Affairs, The Department of State, June 2012 Report. *www.state.gov/e/eb/rls/othr/ics/2012/191182.htm*.

[6] The latest available World Bank data estimated in November 2012 that remittances were $7.6bn for 2012. "Remittances Data: Inflows," Migration and Remittances, The World Bank, November 2012. *http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:21121930~menuPK:3145470~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html*.

[7] "IMF Executive Board Concludes 2011 Article IV Consultation with Lebanon Public Information Notice (PIN) No. 12/11, "International Monetary Fund, February 8, 2012. *http://www.imf.org/external/np/sec/pn/2012/pn1211.htm*.

[8] BdL, Law 347 Regulating the Money Changer Profession in Lebanon, August 6, 2001.

[9] BdL, List of Exchange Institutions, May 2012, *http://www.bdl.gov.lb/bfs/MS/Money_Dealers_arabic.pdf*.

[10] BdL, Intermediate BdL Circular 264, dated May 21, 2011, pages 3–4, *http://www.bdl.gov.lb/circ/intpdf/int264_en.pdf*.

[11] 2012 INCSR.

[12] Special Investigation Commission, Intermediate BdL Circular 263, dated May 21, 2011. *http://www.sic.gov.lb/circular263.shtml*.

[13] FinCEN, *Finding That the Lebanese Canadian Bank SAL Is a Financial Institution of Primary Money Laundering Concern*, 76 F.R. 9403, dated February 17, 2011, *http://www.gpo.gov/fdsys/pkg/FR-2011-02-17/pdf/2011-3346.pdf*.

[14] Press Release, "Treasury Targets Major Lebanese-Based Drug Trafficking and Money Laundering Network," 1/26/11, *http://www.treasury.gov/press-center/press-releases/Pages/tg1035.aspx*; Additions to OFAC's SDN list, dated January 26, 2011, *http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20110126.aspx*.

support from criminal activities of Joumaa's network.

Following these Treasury actions, two U.S. Attorney's Offices took actions against Ayman Joumaa, Elissa Exchange, and Hassan Ayash Exchange. In December 2011, a grand jury in the Eastern District of Virginia returned an indictment against Ayman Joumaa for conspiracy to distribute narcotics and conspiracy to commit money laundering related to drug trafficking by Mexican and Colombian drug cartels.[15] In August 2012, the U.S. Attorney's Office for the Southern District of New York ("SDNY") seized $150 million as part of a civil money laundering and forfeiture action against Hizballah-linked LCB, Elissa Exchange, and Hassan Ayash Exchange based on money laundering schemes involving Ayman Joumaa, the exchange houses, and U.S. car dealers.[16] The "SDNY Complaint" listed, by name, 30 U.S. car dealers and a U.S. shipping company that facilitated the scheme.

BdL re-evaluated AML/CFT regulations regarding money exchange businesses following the Treasury actions. In May and August 2011, BdL revised Lebanon's AML/CFT regulations regarding supervised banks and other non-bank financial institutions by publishing seven decisions [17] modifying Law 347 (dated August 6, 2001). BdL required all of these active licensed money exchangers to maintain business accounts at a formal financial institution, such as a registered Lebanese bank subject to BdL supervision, and prohibited exchangers from operating accounts at Lebanese banks on behalf of their clients.[18]

Despite some improvements to its financial sector supervision, Lebanon still has not acceded to the UN Convention for the Suppression of the Financing of Terrorism. And Hizballah, an organization which the United States designated as a Foreign Terrorist Organization in October 1997 and a Specially Designated Global Terrorist under Executive Order 13224 in October 2001,[19] is a recognized political party with an active role in the Lebanese government. Though it has adopted laws domestically criminalizing any funds resulting from the financing, or contribution to the financing, of terrorism,[20] the active participatory role of a designated terrorist group in the Lebanese government and civil society calls into question the broader efficacy of Lebanon's AML/CFT regime.

III. The Extent to Which Halawi Exchange and Its Subsidiaries Have Been Used To Facilitate or Promote Money Laundering in or Through Lebanon

According to information available to the U.S. Government, Halawi Exchange, its subsidiaries, and their respective management, ownership, and key employees are engaged in illicit financial activity. A pattern of regular, round-number, large-denomination international wire transfers consistent with money laundering are processed through Halawi Exchange. Many of these transactions appear to be structured because they are separated into multiple smaller transactions for no apparent reason. Halawi Exchange facilitates transactions as part of a large-scale trade-based money laundering scheme that involves the purchase of used cars in the United States for export to West Africa. Additionally, Halawi Exchange, and its management, ownership, and key employees are complicit in providing money laundering services for an international narcotics trafficking and money laundering network that is affiliated with Hizballah.

A. Past and Current Association With Used Car Trade-Based Money Laundering Scheme

Halawi Exchange facilitates transactions for a network of individuals and companies which launder money through the purchase and sale of used cars in the United States for export to West Africa. In support of this network, management, ownership, and key employees of Halawi Exchange coordinate transactions—processed within and outside of Halawi Exchange—on behalf of Benin-based money launderers and their associates. A significant portion of the funds are intended for U.S.-based car dealerships for the purchase of cars which are then shipped to Benin.

As of late 2012, Halawi Exchange was primarily used by Benin-based Lebanese car lot owners to wire transfer money to their U.S. suppliers. The proceeds of car sales were hand-transported in the form of bulk cash U.S. dollars from Cotonou, Benin to Beirut, Lebanon via air travel and deposited directly into one of the Halawi Exchange offices, which allowed bulk cash deposits to be made without requiring documentation of where the money originated. Halawi Exchange, through its network of established international exchange houses, initiated wire transfers to the United States without using the Lebanese banking system in order to avoid scrutiny associated with Treasury's designations of Hassan Ayash Exchange, Elissa Exchange, and its LCB 311 Action. The money was wire transferred indirectly to the United States through countries that included China, Singapore, and the UAE, which were perceived to receive less scrutiny by the U.S. Government.

Participants in this network have coordinated the movement of millions of dollars per month, a significant portion of which has moved through Halawi Exchange. For example, in early 2012, Halawi Exchange, its management, its ownership, or key employees were involved in arranging multiple wire transfers totaling over $4 million on behalf of this network. Additionally, as of mid-2012, central figures in this scheme planned to move $224 million worth of vehicle shipping contracts through this network via a Halawi-owned Benin-based car lot, which receives vehicle shipments from the United States. Mahmoud Halawi was heavily involved in the establishment of this car lot, which is run by Ahmed Tofeily, a Benin-based money launderer, and continues to be involved in its operations. This car lot was established six months after the SDNY Complaint. Additionally, Tofeily—a Halawi agent/employee—owns and operates a car lot in Benin named Auto Deal (AKA Ste Auto Deal, Societe Auto Deal) which purchases cars in Canada and exports them through the United States. Tofeily worked closely with Halawi Exchange and wired all of his money through it. This car lot—identified as maintaining no brick and mortar structures—has wired hundreds of thousands of dollars throughout 2012 from Benin to U.S.-based car dealerships.

[15] The United States Attorney's Office for the Eastern District of Virginia Press Release, "U.S. Charges Alleged Lebanese Drug Kingpin With Laundering Drug Proceeds For Mexican And Colombian Drug Cartels" December 13, 2011, *http://www.justice.gov/usaa/vae/news/2011/12/20111213joumaanr.html.*

[16] The United States Attorney's Office for the Southern District of New York press release and civil complaint.

[17] In May 2011 Intermediate Decisions 10725, 10726 and 10728 and in August 2011 Intermediate Decisions 10787, 10789, 10791, and 10792 were published regarding AML/CFT regulations of exchange businesses.

[18] BdL, Intermediate BdL Circular 264, dated May 21, 2011, pages 3–4, *http://www.bdl.gov.lb/circ/intpdf/int264_en.pdf.*

[19] Hizballah is a Lebanon-based terrorist group. Until September 11, 2001, Hizballah was responsible for more American deaths than any other terrorist organization.

[20] For additional information about Lebanon's legal framework and special mechanisms for anti-money laundering and terrorist financing measures, see The Middle East and North Africa Financial Task Force (MENAFATF) *Mutual Evaluation Report, Lebanese Republic,* November 10, 2009 (*www.menafatf.org*).

From 2008 to 2011, Halawi Exchange, its management, and employees sent numerous international wire transfers to U.S.-based used car companies consistent with the practice of laundering money through the purchase of cars in the United States for export to West Africa. Ali Halawi—a partner at Halawi Exchange—is listed by name on many of these transfers. A large number of these transfers were sent through accounts at LCB, which has been identified by Treasury as a financial institution of primary money laundering concern under Section 311 for its role in facilitating the money laundering activities of Ayman Joumaa's international narcotics trafficking and money laundering network. Some of the U.S.-based car dealerships that received funds transfers from Halawi Exchange were later identified in the SDNY Complaint as participants in the Joumaa network's money laundering activities.

Joumaa's network moved illegal drugs from South America to Europe and the Middle East via West Africa and laundered hundreds of millions of dollars monthly through accounts held at LCB, as well as through trade-based money laundering involving consumer goods throughout the world, including through used car dealerships in the United States. This criminal scheme involved bulk cash smuggling operations and use of several Lebanese exchange houses that utilized accounts at LCB branches, as discussed in the LCB 311 Action.

Halawi Exchange has also worked with other Lebanese exchange houses, including Rmeiti Exchange, to facilitate money laundering activities. For example, Halawi Exchange, Rmeiti Exchange, and other exchange houses sent over $9 million in dozens of round-number, large-denomination international wire transfers from unknown sources to the same U.S. car shipping business from 2007 through 2010.

B. Past and Current Connection to Designated Narcotics Kingpins and Their Associates

SDNTs Ibrahim Chebli and Abbas Hussein Harb regularly coordinated and executed financial transactions—including bulk cash transfers—that were processed through the Halawi Exchange. Harb and Chebli were designated by Treasury in June 2012 pursuant to the Kingpin Act for collaboration with Joumaa in the movement of millions of dollars of narcotics-related proceeds. Harb's Columbia- and Venezuela-based organization has laundered money for the Joumaa network through the Lebanese financial sector. Additionally, Chebli used his position as the manager of the Abbassieh branch of Fenicia Bank in Lebanon to facilitate the movement of money for Joumaa and Harb.[21]

C. Past and Current Connection to Another International Narcotics Trafficking and Money Laundering Network With Ties to Hizballah

Management and key employees at Lebanon-based Halawi Exchange and members of the Halawi family coordinate, execute, receive, or are otherwise involved in millions of dollars worth of transactions for members of another international narcotics trafficking and money laundering network. For example, high-level management at Lebanon-based Halawi Exchange and members of the Halawi family were involved in the movement of over $4 million in late 2012 for this international narcotics trafficking and money laundering network. Additionally, Fouad Halawi, acting in his capacity as a senior official at Halawi Holding, was responsible for the receipt and transfer of funds for this narcotics trafficking and money laundering network and provided accounting services for its senior leadership. To avoid detection, the involved parties scheduled structured payments by splitting larger sums into smaller, more frequent transactions which they often moved through numerous high-risk jurisdictions.

This additional international narcotics trafficking and money laundering network has been involved in extensive international narcotics trafficking operations. For example, it is known to have trafficked heroin from Lebanon to the United States and hundred-kilogram quantities of cocaine from South America to Nigeria for distribution in Europe and Lebanon. It is also known to have trafficked cocaine out of Lebanon in multi-ton quantities. The head of this network has operated an extensive money laundering organization, including a series of offshore corporate shell companies and underlying bank accounts, established by intermediaries, to receive and send money transfers throughout the world. It has arranged the laundering of profits from large-scale narcotics trafficking operations. Transfers coordinated by this network have impacted the United States, Canada, Europe, the Middle East, Asia, Australia, and South America. This international narcotics trafficking and money laundering network is affiliated with Hizballah.

Additionally, Halawi Exchange is known to have laundered profits from drug trafficking and cocaine-related money laundering for a Hizballah leader and narcotics trafficker. Halawi Exchange has also been routinely used by other Hizballah associates as a means to transfer illicit funds.

IV. The Extent to Which This Action Is Sufficient To Guard Against International Money Laundering and Other Financial Crimes

FinCEN's April 22, 2013, notice of finding that Halawi Exchange is an institution of primary money laundering concern, along with the Special Measures simultaneously proposed pursuant to the Finding, will guard against the international money laundering and other financial crimes described above directly by restricting the ability of Halawi Exchange to access the U.S. financial system to process transactions, and indirectly by public notification to the international financial community of the risks posed by dealing with Halawi Exchange.

Dated: April 20, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2013–09785 Filed 4–23–13; 11:15 am]

BILLING CODE 4810–02–P

[21] Exhibit 25—Press Release, "Treasury Targets Major Money Laundering Network Linked to Drug Trafficker Ayman Joumaa and a Key Hizballah Supporter in South America," 6/27/11, *http://www.treasury.gov/press-center/press-releases/Pages/tg1624.aspx*

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Order Imposing Recordkeeping and Reporting Obligations on Certain U.S. Financial Institutions With Respect to Transactions Involving Kassem Rmeiti & Co. for Exchange as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Treasury ("FinCEN").

ACTION: Order.

SUMMARY: The Director of FinCEN found on April 22, 2013 that Kassem Rmeiti & Co. For Exchange ("Rmeiti Exchange") is a financial institution operating outside the United States that is of primary money laundering concern. The Director of FinCEN is issuing an order imposing certain recordkeeping and reporting obligations with respect to transactions involving Rmeiti Exchange (the "Order").

DATES: The Order was effective on April 23, 2013. The Order will remain in effect until August 21, 2013.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN, (800) 949–2732.

SUPPLEMENTARY INFORMATION: On April 22, 2013, the Director of FinCEN, pursuant to 31 U.S.C. 5318A, found Rmeiti Exchange to be a Financial Institution of Primary Money Laundering Concern (the "Finding"). Notice of the Finding is published elsewhere in this issue of the **Federal Register**.

Also published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking ("NPRM") proposing to apply the first and fifth special measures provided in 31 U.S.C. 5318A to any transaction or attempted transaction involving Rmeiti Exchange. The explanations and interpretations found in the NPRM are applicable to this Order to the extent that this Order imposes the same obligations proposed in the NPRM.

This Order addresses FinCEN's concern that Rmeiti Exchange may continue to be involved in transactions that present a substantial money laundering risk prior to any implementation of the proposed rule.

This Order applies to covered financial institutions as defined in 31 CFR 1010.605(e)(1), and money transmitters that are required to register under 31 CFR 1022.380 ("principal money transmitters"), that are requested to process transactions involving Rmeiti Exchange. This Order requires covered financial institutions and principal money transmitters to report the information listed in Part 2 below in a comma separated value ("CSV") file. Covered financial institutions and principal money transmitters are required to load the CSV file on an encrypted CD ROM and mail the CD ROM on or before the 15th day following the date of the transaction or the date the covered financial institution or principal money transmitter became aware of the attempted transaction to the Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia 22183–0039 (Attn: 311 Reporting). Information of a contact person from whom FinCEN may obtain the encryption password should be enclosed in the mailing. To ease regulatory burden and as appropriate, reports filed as Bank Secrecy Act-Suspicious Activity Reports ("BSA–SARs") will be deemed to comply with this reporting requirement if filed within 15 days with all required information included in an attached CSV file and containing both in the narrative and field 35z the text "Rmeiti Exchange SM1 Report". As long as transactions or attempted transactions are reported within the fifteen-day requirement and the attached CSV file does not exceed one megabyte, multiple transactions may be reported on the same BSA–SAR.

This Order imposes requirements with respect to entities identified as primary money laundering concern for their involvement in laundering the proceeds of narcotics traffickers and money launderers. Because advanced notice of this action could result in the loss of reporting information related to these entities, and section 311 of the USA PATRIOT Act authorizes the issuance of this Order without a prior notice of proposed rulemaking, it is found to be impracticable, unnecessary, and contrary to the public interest to comply with notice and public procedure under 5 U.S.C. 553(b). For these reasons, the Order is made effective before 30 days have passed after its publication date. See 5 U.S.C. 553(d). In addition, the provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this Order because FinCEN was not required to publish a prior notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

By virtue of the authority contained in 31 U.S.C. 5318A and delegated to the Director of FinCEN, I hereby order, for the period from April 23, 2013 through August 21, 2013 that:

Part 1—Requirements for Financial Institutions Subject to This Order

(1) *Identifying Transactions or Attempted Transactions Involving Kassem Rmeiti & Co. For Exchange.* A financial institution subject to this Order is required to use its existing anti-money laundering programs and processes to identify transactions or attempted transactions involving Kassem Rmeiti & Co. For Exchange. U.S. financial institutions generally apply some degree of due diligence in screening their transactions and accounts, often through the use of commercially available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control of the Department of the Treasury. The identification required by this Order may be accomplished by relying on these same automated programs and filters used to identify sanctioned entities.

(2) *Reporting.* A financial institution subject to this Order is required to take reasonable steps to collect and report to FinCEN on the following information with respect to any transaction or attempted transaction involving Kassem Rmeiti & Co. For Exchange:

(i) The identity and address of the participants in the transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;

(ii) the legal capacity in which Kassem Rmeiti & Co. For Exchange is acting with respect to the transaction or attempted transaction and, to the extent to which Kassem Rmeiti & Co. For Exchange is not acting on its own behalf, the customer or other person on whose behalf Kassem Rmeiti & Co. For Exchange is acting; and

(iii) a description of the transaction or attempted transactions and its purpose.

(3) *When to file.* A report required this Order shall be filed by the financial institution subject to the Order within fifteen business days following the day when the financial institution subject to the Order engaged in the transaction or became aware of an attempted transaction. Willful failure to provide timely, accurate, and complete information in such reporting may constitute a violation of this Order subject to civil and criminal penalties under 31 U.S.C. 5321 and 5322.

(4) *Form of Reporting.* A report required by this Order shall be filed on an encrypted CD ROM sent to the Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia 22183–0039 (Attn: 311 Reporting) However, if a financial institution subject to this Order determines the reportable transaction to be suspicious, filing FinCEN Form 111 within 15 days with all required information included in an attached CSV file and containing both in the narrative and field 35z the text "Rmeiti Exchange SM1 Report" will be deemed to comply with this Order. The collection of information required by this Order is approved under OMB Control Number 1506–0065. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Part 2—Specifications for Reporting

(1) Financial institutions subject to this Order shall place the required information in a CSV file in the following format:

Transaction Reference Number, Payment Date, Instruction Date, Payment Amount, Transmittor's Account Number, Transmittors's Full Name, Transmittors's Address, Transmittor's Financial Institution's Identifier, Transmittor's Financial Institution's Name, Transmittor's

Financial Institution's Address, Incoming Correspondent Financial Institution's Identifier, Incoming Correspondent Financial Institution's Name, Incoming Correspondent Financial Institution's Address, Outgoing Correspondent Financial Institution's Identifier, Outgoing Correspondent Financial Institution's Name, Outgoing Correspondent Financial Institution's Address, Recipient's Financial Institution's Identifier, Recipient's Financial Institution's Name, Recipient's Financial Institution's Address, Recipient's Account Number, Recipient's Full Name, Recipient's Address, Payment Instructions.

Part 3—Definitions

When used in this Order, where not otherwise distinctly defined or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in 31 CFR 1010.100. For purposes of this Order, the following terms shall have the following meanings:

(1) *Kassem Rmeiti & Co. For Exchange* means all branches, offices, and subsidiaries of Kassem Rmeiti & Co. For Exchange operating in any jurisdiction, including the Rmaiti Group SAL in Lebanon and Societe Rmaiti SARL (STE Rmeiti) located in Benin specifically identified in the Finding.

(2) *Financial institution subject to the Order* means a covered financial institution as defined in 31 CFR 1010.605(e)(1) or a money transmitter required to register under 31 CFR 1022.380.

(3) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by Kassem Rmeiti & Co. For Exchange.

(4) *Transaction Reference Number* means a reference number assigned to a transaction by the reporting financial institution.

(5) *Incoming Correspondent Financial Institution* means the financial institution that sent the transmittal order to the reporting financial institution.

(6) *Outgoing Correspondent Financial Institution* means the financial institution to which the reporting financial institution will send a transmittal order.

(7) *Payment Instructions* means any information provided by the originator to be included in the transmittal order that describes the purpose of the transaction for the beneficiary.

Dated: April 20, 2013.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2013–09779 Filed 4–23–13; 11:15 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Order Imposing Recordkeeping and Reporting Obligations on Certain U.S. Financial Institutions With Respect to Transactions Involving Halawi Exchange Co. as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Treasury ("FinCEN").

ACTION: Order.

SUMMARY: The Director of FinCEN found on April 22, 2013, that Halawi Exchange Co. ("Halawi Exchange") is a financial institution operating outside the United States that is of primary money laundering concern. The Director of FinCEN is issuing an order imposing certain recordkeeping and reporting obligations with respect to transactions involving Halawi Exchange (the "Order").

DATES: The Order is effective on April 23, 2013. The Order will remain in effect until August 21, 2013.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN, (800) 949–2732.

SUPPLEMENTARY INFORMATION: On April 22, 2013, the Director of FinCEN, pursuant to 31 U.S.C. 5318A, found Halawi Exchange to be a Financial Institution of Primary Money Laundering Concern (the "Finding"). Notice of the Finding is published elsewhere in this issue of the **Federal Register**.

Also published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking ("NPRM") proposing to apply the first and fifth special measures provided in 31 U.S.C. 5318A to any transaction or attempted transaction involving Halawi Exchange. The explanations and interpretations found in the NPRM are applicable to this Order to the extent that this Order imposes the same obligations proposed in the NPRM.

This Order addresses FinCEN's concern that Halawi Exchange may continue to be involved in transactions that present a substantial money laundering risk prior to any implementation of the proposed rule.

This Order applies to covered financial institutions as defined in 31 CFR 1010.605(e)(1), and money transmitters that are required to register under 31 CFR 1022.380 ("principal money transmitters"), that are requested to process transactions involving Halawi Exchange. This Order requires covered financial institutions and principal money transmitters to report the information listed in Part 2 below in a comma separated value ("CSV") file. Covered financial institutions and principal money transmitters are required to load the CSV file on an encrypted CD–ROM and mail the CD–ROM on or before the 15th day following the date of the transaction or the date the covered financial institution or principal money transmitter became aware of the attempted transaction to the Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia 22183–0039 (Attn: 311 Reporting). Information of a contact person from whom FinCEN may obtain the encryption password should be enclosed in the mailing. To ease regulatory burden and as appropriate, reports filed as Bank Secrecy Act-Suspicious Activity Reports ("BSA–SARs") will be deemed to comply with this reporting requirement if filed within 15 days with all required information included in an attached CSV file and containing both in the narrative and field 35z the text "Halawi Exchange SM1 Report". As long as transactions or attempted transactions are reported within the fifteen-day requirement and the attached CSV file does not exceed one megabyte, multiple transactions may be reported on the same BSA–SAR.

This Order imposes requirements with respect to entities identified as primary money laundering concern for their involvement in laundering the proceeds of narcotics traffickers and money launderers. Because advanced notice of this action could result in the loss of reporting information related to these entities, and section 311 of the USA PATRIOT Act authorizes the issuance of this Order without a prior notice of proposed rulemaking, it is found to be impracticable, unnecessary, and contrary to the public interest to comply with notice and public procedure under 5 U.S.C. 553(b). For these reasons, the Order is made effective before 30 days have passed after its publication date. See 5 U.S.C. 553(d). In addition, the provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this Order because FinCEN was not required to publish a prior

notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

By virtue of the authority contained in 31 U.S.C. 5318A and delegated to the Director of FinCEN, I hereby order, for the period from April 23, 2013 through August 21, 2013 that:

Part 1—Requirements for financial institutions subject to this Order

(1) *Identifying Transactions or Attempted Transactions Involving Halawi Exchange Co.* A financial institution subject to this Order is required to use its existing anti-money laundering programs and processes to identify transactions or attempted transactions involving Halawi Exchange Co. U.S. financial institutions generally apply some degree of due diligence in screening their transactions and accounts, often through the use of commercially available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control of the Department of the Treasury. The identification required by this Order may be accomplished by relying on these same automated programs and filters used to identify sanctioned entities.

(2) *Reporting.* A financial institution subject to this Order is required to take reasonable steps to collect and report to FinCEN on the following information with respect to any transaction or attempted transaction involving Halawi Exchange Co.:

(i) The identity and address of the participants in the transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;

(ii) the legal capacity in which Halawi Exchange Co. is acting with respect to the transaction or attempted transaction and, to the extent to which Halawi Exchange Co. is not acting on its own behalf, the customer or other person on whose behalf Halawi Exchange Co. is acting; and

(iii) a description of the transaction or attempted transaction and its purpose.

(3) *When to file.* A report required this Order shall be filed by the financial institution subject to the Order within fifteen business days following the day when the financial institution subject to the Order engaged in the transaction or became aware of an attempted transaction. Willful failure to provide timely, accurate, and complete information in such reporting may constitute a violation of this Order subject to civil and criminal penalties under 31 U.S.C. 5321 and 5322.

(4) *Form of Reporting.* A report required by this Order shall be filed on an encrypted CD–ROM sent to the Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna. Virginia 22183–0039 (Attn: 311 Reporting) However, if a financial institution subject to this Order determines the reportable transaction to be suspicious, filing FinCEN Form 111 within 15 days with all required information included in an attached CSV file and containing both in the narrative and field 35z the text "Halawi Exchange SM1 Report" will be deemed to comply with this Order. The collection of information required by this Order is approved under OMB Control Number 1506–0065. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Part 2—Specifications for Reporting.

(1) Financial institutions subject to this Order shall place the required information in a CSV file in the following format:

Transaction Reference Number, Payment Date, Instruction Date, Payment Amount, Transmittor's Account Number, Transmittors's Full Name, Transmittors's Address, Transmittor's Financial Institution's Identifier, Transmittor's Financial Institution's Name, Transmittor's Financial Institution's Address, Incoming Correspondent Financial Institution's Identifier, Incoming Correspondent Financial Institution's Name, Incoming Correspondent Financial Institution's Address, Outgoing Correspondent Financial Institution's Identifier, Outgoing Correspondent Financial Institution's Name, Outgoing Correspondent Financial Institution's Address, Recipient's Financial Institution's Identifier, Recipient's Financial Institution's Name, Recipient's Financial Institution's Address, Recipient's Account Number. Recipient's Full Name, Recipient's Address, Payment Instructions.

Part 3—Definitions.

When used in this Order, where not otherwise distinctly defined or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in 31 CFR 1010.100. For purposes of this Order, the following terms shall have the following meanings:

(1) *Halawi Exchange Co.* means all branches, offices, and subsidiaries of Halawi Exchange Co. operating in any jurisdiction.

(2) *Financial institution subject to the Order* means a covered financial institution as defined in 31 CFR 1010.605(e)(1) or a money transmitter required to register under 31 CFR 1022.380.

(3) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by Halawi Exchange Co.

(4) *Transaction Reference Number* means a reference number assigned to a transaction by the reporting financial institution.

(5) *Incoming Correspondent Financial Institution* means the financial institution that sent the transmittal order to the reporting financial institution.

(6) *Outgoing Correspondent Financial Institution* means the financial institution to which the reporting financial institution will send a transmittal order.

(7) *Payment Instructions* means any information provided by the originator to be included in the transmittal order that describes the purpose of the transaction for the beneficiary.

Dated: April 20, 2013.

Jennifer Shasky Calvery,

Director, Finonciol Crimes Enforcement Network.

[FR Doc. 2013–09786 Filed 4–23–13; 11:15 am]

BILLING CODE 4810–02–P

FEDERAL REGISTER

Vol. 78 Thursday,
No. 80 April 25, 2013

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2012–0044; 450 003 0115]

Endangered and Threatened Wildlife and Plants; Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this Annual Notice of Review (ANOR) of foreign species, we present an updated list of plant and animal species foreign to the United States that we regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. This review ensures that we focus conservation efforts on those species at greatest risk first. Overall, this ANOR recognizes one new candidate and removes one species from candidate status. The current number of foreign species that are candidates for listing is 20. Based on our current review, we find that 20 species continue to warrant listing, but their listing remains precluded by higher priority proposals to determine whether any species is an endangered species or a threatened species.

DATES: We will accept information on these resubmitted petition findings at any time.

ADDRESSES: This notice is available on the Internet at *http://www.regulations.gov*. Please submit any new information, materials, comments, or questions of a general nature on this notice to the Arlington, VA, address listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. 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

In this Annual Notice of Review (ANOR) of foreign species, we present an updated list of plant and animal species foreign to the United States that we regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. When, in response to a petition, we find that listing a species is warranted but precluded by higher priority proposals to determine whether any species is an endangered species or a threatened species, we must review the status of the species each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent status reviews and the accompanying 12-month findings are referred to as "resubmitted" petition findings.

Since publication of the previous ANOR on May 3, 2011 (76 FR 25150), we reviewed the available information on candidate species to ensure that listing is warranted for each species and reevaluated the relative listing priority number (LPN) assigned to each species. We also evaluated the need to emergency list any of these species, particularly species with high listing priority numbers (i.e., species with LPNs of 1, 2, or 3). This review ensures that we focus conservation efforts on those species at greatest risk first. In addition to reviewing foreign candidate species since publication of the last ANOR, we have worked on numerous findings in response to petitions to list species and on proposed and final determinations for rules to list, delist, or downlist species under the Act. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (see Preclusion and Expeditious Progress section, below, for details).

Overall, this ANOR recognizes one new candidate and removes one species from candidate status. The current number of foreign species that are candidates for listing is 20. Based on our current review, we find that 20 species continue to warrant listing, but their listing remains precluded by higher priority proposals to determine whether any species is an endangered species or a threatened species.

Request for Information

This ANOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign an LPN to each species or to determine that species should be removed from candidate status. This document also describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants (Lists) during the period May 3, 2011, through September 30, 2012.

With this ANOR, we request additional information for the 20 taxa whose listings are warranted but precluded by higher priority proposals to determine whether any species is an endangered or threatened species. We will consider this information in preparing listing documents and future resubmitted petition findings for these 20 taxa. This information will also help us to monitor the status of the taxa and conserve them. We request the submission of any further information on the species in this notice as soon as possible, or whenever it becomes available. We especially seek information:

(1) Indicating that we should remove a taxon from consideration for listing;

(2) Documenting threats to any of the included taxa;

(3) Describing the immediacy or magnitude of threats facing these taxa;

(4) Identifying taxonomic or nomenclatural changes for any of the taxa; or

(5) Noting any mistakes, such as errors in the indicated historic ranges.

You may submit your information concerning this notice in general or for any of the species included in this notice by one of the methods listed in the **ADDRESSES** section.

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), provides two mechanisms for considering species for listing. First, we, upon our own initiative, can identify and propose for listing those species that are endangered or threatened based on the factors contained in section 4(a)(1) of the Act. We implement this mechanism through the candidate program. Candidate taxa are those taxa for which we have sufficient information on file relating to biological vulnerability and threats to support a proposal to list the taxa as endangered or threatened, but for which preparation and publication of a proposed rule is precluded by higher priority proposals to determine whether any species is an endangered species or a threatened species. The second mechanism for considering species for listing is when the public petitions us to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists). Nineteen of these species covered by this notice were assessed through the petition process.

Under section 4(b)(3)(A) of the Act, when we receive a listing petition we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (90-day finding). If

we make a positive 90-day finding, we are required to promptly commence a review of the status of the species. Using the information from the status review, in accordance with section 4(b)(3)(B) of the Act, we must make one of three findings within 12 months of the receipt of the petition (12-month finding). The first possible 12-month finding is that listing is not warranted, in which case we need not take any further action on the petition. The second possibility is that we may find that listing is warranted, in which case we must promptly puhlish a proposed rule to list the species. Once we publish a proposed rule for a species, sections 4(b)(5) and 4(b)(6) of the Act govern further procedures, regardless of whether or not we issued the proposal in response to the petition. The third possibility is that we may find that listing is warranted but precluded. A warranted-but-precluded finding on a petition to list means that listing is warranted, but that the immediate proposal and timely promulgation of a final regulation is precluded by higher priority listing actions. In making a warranted-but-precluded finding under the Act, the Service must demonstrate that expeditious progress is being made to add and remove species from the Lists (See *Preclusion and Expeditious Progress* section).

In accordance with section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding annually until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as "resubmitted" petition findings. This notice contains our resubmitted petition findings for foreign species previously described in the Notice of Review published May 3, 2011 (76 FR 25150).

We maintain this list of candidates for a variety of reasons: To notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings; to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; to request input from interested parties to help us identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to request necessary information for setting priorities for preparing listing proposals. We strongly encourage collaborative conservation efforts for candidate species, and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, see **FOR FURTHER INFORMATION CONTACT.**

On September 21, 1983, we published guidance for assigning a listing priority number (LPN) for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Guidelines for such a priority-ranking guidance system are required under section 4(h)(3) of the Act (15 U.S.C. 1533(h)(3)). As explained below, in using this system we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either "high" or "moderate to low." This criterion helps ensure that the species facing the greatest threats to their continued existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. When evaluating the magnitude of the threat(s) facing the species, we consider information such as: the number of populations and/or extent of range of the species affected by the threat(s); the biological significance of the affected population(s), the life-history characteristics of the species and its current abundance and distribution; and whether the threats affect the species in only a portion of its range.

As used in our priority ranking system, immediacy of threat is categorized as either "imminent" or "nonimminent." It is not a measure of how quickly the species is likely to become extinct if the threats are not addressed; rather, immediacy is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species that are intrinsically vulnerable to certain types of threats, but are not known to be presently facing such threats.

Our priority-ranking system has three categories for taxonomic status: species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPS). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. Each species included in this notice is one for which we have sufficient information to prepare a proposed rule to list, because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the guidance is available on our Web site at: *http://www.fws.gov/endangered/esa-library/pdf/48fr43098-43105.pdf*. For more information on the LPN assigned to a particular species, the species assessment for each candidate contains the LPN and a rationale for the determination of the magnitude and imminence of threat(s) and assignment of the LPN; that information is presented in this ANOR.

Previous Notices

This revised notice supersedes all previous annual notices of review for foreign species. The species discussed in this notice are in part the result of three separate petitions submitted to the U.S. Fish and Wildlife Service (Service) to list a number of foreign bird and butterfly species as endangered or threatened under the Act. We received petitions to list foreign bird species on November 24, 1980, and May 6, 1991 (46 FR 26464, May 12, 1981; and 56 FR 65207, December 16, 1991, respectively). On January 10, 1994, we received a petition to list seven butterfly species as endangered or threatened (59 FR 24117; May 10, 1994).

We took several actions on these petitions. Our most recent review of petition findings was published on May 3, 2011 (76 FR 25150). Since our last review of petition findings in May 2011, we have issued a proposed rule to list one species previously included in the ANOR (see the Preclusion and Expeditious Progress section for additional listing actions that were not related to this notice). On January 10, 2013, we published a proposed rule to list the blue throated macaw under the Act (78 FR 2239).

Findings on Resubmitted Petitions

This notice describes our resubmitted petition findings for 19 foreign species for which we had previously found listing to be warranted but precluded. We have considered all of the new information that we have obtained since the previous finding, and we have reviewed in accordance with our Listing

Priority Guidance the LPN of each taxon for which proposed listing continues to be warranted but precluded. Based on our review of the best available scientific and commercial information, with this ANOR, we have changed the LPN for two candidate species.

New Candidate Species

Below we present a summary of one new species Colorado delta clam (*Mulinia coloradoensis*), which is an addition to this year's ANOR. Based upon our own initiative, we find that we have sufficient information on its biological vulnerability and threats to support a proposal to list it as endangered or threatened, but preparation and publication of a proposal is precluded by higher priority listing actions (i.e., it met our definition of a candidate species).

As a result of our review, we find that warranted-but-precluded findings is appropriate for the below 20 species, including 1 new candidate species. We emphasize that we are not proposing these species for listing, but we do anticipate developing and publishing proposed listing rules for these species in the future, with an objective of making expeditious progress in addressing all 20 of these foreign species within a reasonable timeframe.

Table 1 provides a summary of all updated determinations of the 20 taxa in our review. All taxa in Table 1 of this notice are ones for which we find that listing is warranted but precluded and are referred to as "candidates" under the Act. The column labeled "Priority" indicates the LPN. Following the scientific name of each taxon (third column) is the family designation (fourth column) and the common name, if one exists (fifth column). The sixth column provides the known historic range for the taxon. The avian species in Table 1 are listed taxonomically.

TABLE 1—SPECIES IN 2012 ANNUAL NOTICE OF REVIEW

[C = listing is warranted but precluded]

Status		Scientific name	Family	Common name	Historic range
Category	Priority				
Birds					
C	2	*Pauxi unicornis*	*Craciidae*	southern helmeted curassow.	Bolivia, Peru.
C	2	*Rallus semiplumbeus*	*Rallidae*	Bogota rail	Colombia.
C	8	*Porphyrio hochstetteri*	*Rallidae*	takahe	New Zealand.
C	8	*Haematopus chathamensis*	*Haematopodidae*	Chatham oystercatcher	Chatham Islands, New Zealand.
C	8	*Cyanoramphus malherbi*	*Psittacidae*	orange-fronted parakeet	New Zealand.
C	8	*Eunymphicus uvaeensis*	*Psittacidae*	Uvea parakeet	Uvea, New Caledonia.
C	8	*Dryocopus galeatus*	*Picidae*	helmeted woodpecker	Argentina, Brazil, Paraguay.
C	2	*Dendrocopus noguchii*	*Picidae*	Okinawa woodpecker	Okinawa Island, Japan.
C	2	*Aulacorhynchus huallagae*	*Ramphastidae*	yellow-browed toucanet	Peru.
C	11	*Scytalopus novacapitalis*	*Conopophagidae*	Brasilia tapaculo	Brazil.
C	12	*Bowdleria punctata wilsoni*	*Sylviidae*	Codfish Island fernbird	Codfish Island, New Zealand.
C	2	*Zosterops luteirostris*	*Zosteropidae*	Ghizo white-eye	Solomon Islands.
C	8	*Tangara peruviana*	*Thraupidae*	black-backed tanager	Brazil.
C	6	*Strepera graculina crissalis*	*Cracticidae*	Lord Howe pied currawong.	Lord Howe Islands, New South Wales.
Invertebrates (Butterflies)					
C	6	*Eurytides (= Graphium or Mimoides) lysithous harrisianus.*	*Paplionidae*	Harris' mimic swallowtail	Brazil.
C	2	*Eurytides (= Graphium or Neographium or Protographium or Protesilaus) marcellinus.*	*Paplionidae*	Jamaican kite swallowtail	Jamaica.
C	5	*Parides ascanius*	*Paplionidae*	Fluminense swallowtail	Brazil.
C	2	*Parides hahneli*	*Paplionidae*	Hahnel's Amazonian swallowtail.	Brazil.
C	8	*Teinopalpus imperialis*	*Paplionidae*	Kaiser-I-Hind swallowtail	Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, Vietnam.
Mollusc					
C	2	*Mulinia coloradoensis*	*Mactridae*	Colorado delta clam	Mexico.

Findings on Species for Which Listing Is Warranted But Precluded

We have found that, for the 20 taxa discussed below, publication of proposed listing rules is warranted but precluded due to the need to complete pending, higher priority proposals to determine whether any species is an endangered species or a threatened species. We will continue to monitor the status of these species as new information becomes available (see Monitoring, below). Our review of new information will determine if a change

in status is warranted, including the need to emergency list any species or change the LPN of any of the species. In the following section, we describe the status of and threats to the individual species.

Birds

Southern Helmeted Curassow (*Pauxi unicornis*), LPN = 2

Taxonomy

The Bolivian population of the nominate (a subspecies with the same name as the species) species (*Pauxi unicornis unicornis*) remained unknown to science until 1937 (Cordier 1971). The Peruvian subspecies is *Pauxi unicornis koepckeae* (Gastañaga *et al.* 2011, p. 267). What is now recognized as the southern helmeted curassow may in fact be two separate species that are currently recognized as two subspecies (*Pauxi unicornis unicornis* and *Pauxi unicornis koepckeae*). It has been proposed that these subspecies of *Pauxi unicornis* may represent two different species because they are separated by more than 1,000 km (621 mi), and have distinct characteristics (Gastañaga *et al.* 2011, p. 267). Currently, both BirdLife International (BLI) and the International Union for Conservation of Nature (IUCN) recognize the southern helmeted curassow as *Pauxi unicornis* and do not specifically address either subspecies. The Integrated Taxonomic Information System (ITIS) recognizes *Pauxi unicornis* as a full species as well as both subspecies (ITIS 2012, accessed June 11, 2012).

In many cases, taxonomy of species can be unclear. There is substantial discussion in scientific literature that debates the classification of species and whether various entities deserve species status rather than subspecies status (Phillimore 2010, pp. 42–53; James 2010, pp. 1–5; Pratt 2010, pp. 79–89). This is sometimes significant with respect to conservation measures, particularly when considering the criteria used by organizations such as the IUCN. These two subspecies may in fact be species, but for the purpose of this review, these two subspecies essentially face the same threats, are generally in the same region of South America, and both have quite small populations. Absent peer-reviewed information to the contrary and based on the best available information, we recognize both subspecies as being valid. For the purpose of this review, we are reviewing the petitioned entity, *Pauxi unicornis*, which includes all subspecies. We welcome comments on the classification of the southern helmeted curassow.

Species Description

The southern helmeted curassow, also known as the helmeted or horned curassow or the unicorn bird, is one of the least frequently encountered South American bird species (Tobias and del Hoyo 2006, p. 61; Maillard 2006, p. 95; Cox *et al.* 1997, p. 199). This may be due to the inaccessibility of its preferred habitat and its apparent intolerance of human disturbance (Macleod *et al.* 2009, pp. 15–16; Herzog and Kessler 1998).

This species of curassow inhabits dense, humid, lower montane forest and adjacent evergreen forest at altitudes of between 450 and 1,200 meters (m) (1,476 to 3,937 feet) (Cordier 1971; Herzog and Kessler 1998). It prefers eating nuts of the almendrillo tree (*Byrsonima wadsworthii* (Cordier 1971)), but also consumes other nuts, seeds, fruit, soft plants, larvae, and insects (BLI 2008). Clutch size of the southern helmeted curassow is probably two, as in other *Cracidae*. However, the only nest found contained only one egg (Banks 1998; Cox *et al.* 1997; Renjifo and Renjifo 1997 as cited in BLI 2010a).

Range

The southern helmeted curassow is only known to occur in central Bolivia and central Peru (BirdLife International (BLI) 2012). One of the locations where it has been found is Valle de la Luna, on the east side of the Río Leche, 0.5–1.0 km (0.3–0.6 miles) north of Parque Nacional Carrasco, in the Department of Cochabamba, Bolivia. The Valley is an extensive, flat, largely unvegetated area at 450 m (1,476 ft) above sea level, bounded by the Río Leche to the west and by steep cliffs and primary forest to the east. It has also been located in Amboró (Macleod *et al.* 2009, pp. 15–16).

Research indicates that the species once inhabited a contiguous area along the Peruvian-Bolivian Andean mountain cloud forest chain, and now has become two isolated populations or subspecies (see Appendix A in Docket FWS–R9–ES–2012–0044 for a map) that are at the peripheries of its former range (Gastañaga *et al.* 2011, p. 273). In Bolivia, the horned curassow is found only in the departments of Cochabamba and Santa Cruz (BLI 2012; Maillard 2006, p. 95). All current records are from in or near three protected areas—Amboró, Carrasco, and Isiboro-Sécore (Asociación Armonía 2012; Maillard 2006, p. 95).

In Amboró National Park (Yungas Inferiores de Amboró), the southern helmeted curassow was regularly seen on the upper Saguayo River (Saguayo Río) (Wege and Long 1995). More recently, it has been observed in the adjacent Amboró and Carrasco National Parks (Maillard 2006, p. 95; Brooks 2006; Herzog and Kessler 1998). It was also found in Isiboro-Secure Indigenous Territory and National Park (TIPNIS), and along the western edge of the Cordillera Mosetenes, Cochabamba. A recent survey located a few southern helmeted curassows across the northern boundary of Carrasco National Park, where it was historically found (MacLeod 2007 as cited in BLI 2009a). Some surveys conducted between 2004 and 2005 found no evidence of the species anywhere north or east of Amboró, Carrasco, and Isiboro-Secure National Parks in central Bolivia (Macleod *et al.* 2009, p. 16). However, one survey in 2005 found it approximately 8 km (5 mi) northeast of Palmasola in the Integrated Management Natural Area, Amboró, Santa Cruz Department (Maillard 2006, p. 95). It was found only in six locations during the surveys. Extensive surveys over the last several years have failed to locate the species in Madidi National Park, La Paz, on the eastern edge of the Mosetenes Mountains in Cochabamba, or in the Río Tambopata area near the Bolivia-Peru border (MacLeod *in litt.* 2003 as cited in BLI 2010a; Hennessey 2004a as cited in BLI 2009a; Maccormack *in litt.* 2004 as cited in BLI 2008).

In Peru, *Pauxi u. koepckeae* is known only from the Sira Mountains (known as the Reserva Comunal El Sira), in the Department of Huánuco (Gastañaga *et al.* 2011, pp. 267, 269; Tobias and del Hoyo 2006). Surveys suggest that the southern helmeted curassow is extremely rare here (Gastañaga *et al.* 2011, p. 267; MacLeod *in litt.* 2004 as cited in BLI 2008; Maccormack *in litt.* 2004 as cited in BLI 2009a; Gastañaga and Hennessey 2005; Mee *et al.* 2002). *Pauxi u. koepckeae* occurs in an area that is isolated from the Andes Mountains.

Population

The total population of southern helmeted curassow is estimated to be between 1,500 and 7,500 individuals (BLI 2012). Within its limited range, the southern helmeted curassow typically occurs at densities of up to 20 individuals per square kilometer (km^2) (Macleod 2007 as cited in BLI 2008). Within Peru, the population is estimated to have fewer than 400 individuals (Gastañaga *in litt.* 2007, as cited in BLI 2010a). In recent years, extensive field surveys of southern helmeted curassow habitat have resulted in little success in locating the

species (Hennessey 2004a; MacLeod *in litt.* 2004 as cited in BLI 2009a; Maccormack *in litt.* 2004 as cited in BLI 2010a; MacLeod *in litt.* 2003 as cited in BLI 2010a; Mee *et al.* 2002). As of 2009, the estimated decline in the overall population over 10 years was 50 to 79 percent (BLI 2009b).

Factors Affecting the Species

The southern helmeted curassow is dependent upon particular environmental conditions that have been altered over the past few centuries. Southern helmeted curassow populations are estimated to be declining very rapidly (Gastañaga *et al.* 2011, p. 277; Gastañaga 2006, p. 15). This species has a small range and is known only from a few locations, and continues to be subject to habitat loss and hunting pressure. The species was observed in a forested area approximately 5 km (3 mi) from the Valle de la Luna clay lick site where parrots forage for nutrients (Mee *et al.* 2005, p. 4), but it had apparently been exterminated by hunting within 5 years (McLeod *in litt.* in Mee *et al.* 2005, p. 4).

In Bolivia, large parts of southern helmeted curassow habitat are ostensibly protected by inclusion in the Amboró and Carrasco National Parks and in the Isiboro-Secure Indigenous Territory and National Park. However, pressures on the species' populations continue (BLI 2010a). Forests within the range of the southern helmeted curassow in Bolivia are being cleared for crop cultivation by colonists from the altiplano (Maillard 2006, pp. 95–98). Rural development including road building inhibits its dispersal (Fjeldså *in litt.* 1999 as cited in BLI 2010; Herzog and Kessler 1998). Historically, the species was often hunted for meat due to its large size and for its unique blue casque, or horn, which the local people used to make cigarette lighters (Collar *et al.* 1992; Cordier 1971). In the Amboró region of Bolivia, the bird's head was purportedly used in folk dances (Hardy 1984 as cited in Collar 1992). It is unclear whether this practice still occurs.

In Peru, the main factor affecting *P. u. koepckeae* is hunting by local communities (Gastañaga *et al.* 2011, p. 277), but the species is also impacted by subsistence agriculture forest clearing by colonists, mining, oil exploration, and illegal logging (MacLeod *in litt.* 2000 as cited in BLI 2010a). The Río Leche area experienced a 100 percent population decline in less than 5 years likely due to hunting or other pressures (Macleod *et al.* 2009, p. 16). In Carrasco National Park, the species had been abundant during surveys in 2001, but in 2004, there were no visual or auditory sightings (Macleod *et al.* 2009, p. 16). The disappearance may be due to illegal human encroachment. Unless threats are mitigated, this trend will probably continue for the next several years (Macleod *in litt.* 2005).

Peru and Bolivia have enacted various laws and regulatory mechanisms to protect and manage wildlife and their habitats. However, the remaining suitable habitat for this species is fragmented and degraded. Habitat throughout the species' range has been and continues to be altered as a result of human activities, particularly human encroachment and concomitant increased pressure on natural resources. Despite the recent improvements in laws in Peru and Bolivia, destructive activities are ongoing within protected areas and in these species' habitat, indicating that the laws governing wildlife and habitat protection in both countries are either inadequate or inadequately enforced to protect the species or to mitigate ongoing habitat loss and population declines.

The FAO conducted a review of forest policies and laws in 2010, and a summary for Peru and Bolivia is in Table 2. The study found that, although Peru does not have a national forest policy, it does have both a national forest program and law in place. Bolivia has a national forest policy, national forest program, and law program in place. No forest laws at the subnational level (such as jurisdictions equivalent to states in the United States) exist in these countries. FAO reported that Peru and Bolivia reported a significant loss of primary forests; this loss peaked in the period 2000–2005 in Peru and increased in Bolivia in the last decade compared with the 1990s (p. 56). FAO also reported that, at a regional level, South America suffered the largest net loss of forests between 2000 and 2010: at a rate of approximately 4.0 million ha (9.9 million ac) per year (p. xvi). In Bolivia, habitat is protected either on the national or departmental level. Recently, Bolivia passed the "Law of Rights of Mother Earth" to add strength to its existing environmental protection laws. This law has the objective of recognizing the rights of the planet (Government of Bolivia, 2010).

TABLE 2—SUMMARY OF FOREST POLICIES AND LAWS IN BOLIVIA AND PERU (ADAPTED FROM FAO GLOBAL FOREST RESOURCE ASSESSMENT 2010, P. 303)

Country	National forest policy		National forest program			Forest law national		
	Exists	Year	Exists	Year	Status	National—type	Year	Subnational exists
Bolivia	Yes	2008	Yes	2008	In implementation	Specific forest law	1996	No
Peru	No	—	Yes	2004	In implementation	Specific forest law	2000	No

Conservation Status

The southern helmeted curassow is classified as endangered on the IUCN Red List (BLI 2012; BLI 2009a). It is not listed in any appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; *www.cites.org*), which regulates international trade in animals and plants of conservation concern.

It is legally protected in the El Sira Communal Reserve (most of the Sira Mountains), but hunting still likely occurs in this area. The Armonía Association is carrying out an environmental awareness project to inform local people about the threats to the southern helmeted curassow (Asociación Armonía 2010) and is conducting training workshops with park guards to help improve chances for its survival. Armonía is also attempting to estimate southern helmeted curassow population numbers to identify its most important populations and is evaluating human impact on the species' natural habitat.

In the previous ANOR, the southern helmeted curassow received an LPN of 2. After reevaluating the threats to the species, we have determined that no change in the LPN is warranted. The southern helmeted curassow does not represent a monotypic genus. It faces threats that are high in magnitude based on its small, limited range. The few locations where it is believed to exist continue to be subject to habitat

destruction and loss from agricultural development, road building, and hunting. Although the population is estimated to be between 1,500 and 7,500 individuals, this may be an overestimate because it has such a limited range and the population trend is believed to be rapidly declining (Jetz *et al.* 2007, p. 1). The best scientific information available suggests that the population decline will continue in the future. Because the species is experiencing such a significant population decline and is still experiencing significant pressures, this species has an LPN of 2 to reflect imminent threats of high magnitude.

Bogota Rail (*Rallus semiplumbeus*), LPN = 2

Species and Habitat Description

The Bogota rail is found in the East Andes of Colombia on the Ubaté-Bogotá Plateau in Cundinamarca and Boyacá. It occurs in the temperate zone at 2,500–4,000 m (8,202–13,123 ft and occasionally as low as 2,100 m) (6,890 ft) in savanna and páramo marshes (BLI 2010b). Bogota rails inhabit wetland habitats with vegetation-rich shallows that are surrounded by tall, dense reeds and bulrushes (Stiles *in litt.* 1999 as cited in BLI 2010b). The species inhabits the water's edge, in flooded pasture and along small overgrown dykes and ponds (Varty *et al.* 1986 as cited in BLI 2010b; Fjeldså 1990 as cited in BLI 2010b; Fjeldså and Krabbe 1990 as cited in BLI 2010b; Salaman *in litt.* 1999 as cited in BLI 2010b). Nests have been recorded adjoining shallow water in beds of *Scirpus* (bulrush or sedge) and *Typha* (cat tail) species (Stiles *in litt.* 1999 as cited in BLI 2010b). The Bogota rail is omnivorous, consuming a diet that includes aquatic invertebrates, insect larvae, worms, mollusks, dead fish, frogs, tadpoles, and plant material (BLI 2012; Varty *et al.* 1986 as cited in BLI 2010b).

Population and Range

The current population is estimated to be between 1,000 and 2,499 individuals (BLI 2012). Although the Bogota rail has been observed in at least 21 locations in Cundinamarca, the Bogota rail population is thought to be declining. It is still described as being uncommon to fairly common, with a few notable populations, including nearly 400 birds at Laguna de Tota, approximately 50 bird territories at Laguna de la Herrera, approximately 100 birds at Parque La Florida, and populations at La Conejera marsh and Laguna de Fuquene (BLI 2010b).

Factors Affecting the Species

Its suitable habitat has become widely fragmented (BLI 2012; BLI 2010b). Wetland drainage, pollution, and siltation on the Ubaté-Bogotá plateau have resulted in major habitat loss and few suitably vegetated marshes remain. All major savanna wetlands are threatened, predominately due to draining, but also due to agricultural runoff, erosion, dyking, eutrophication caused by untreated sewage effluent, insecticides, tourism, hunting, burning, reed harvesting, fluctuating water levels, and increasing water demand. Additionally, road construction may result in colonization and human interference, including introduction of exotic species in previously stable wetland environments (Cortes *in litt.* 2007 as cited in BLI 2010b).

Conservation Status

The Bogota rail is listed as endangered by IUCN primarily because its range is very small and is contracting due to widespread habitat loss and degradation. It is not listed in any appendices of CITES. Some Bogota rails occur in protected areas such as Chingaza National Park and Carpanta Biological Reserve. However, most savanna wetlands are virtually unprotected (BLI 2012).

In the previous ANOR, the Bogota rail received an LPN of 2. After reevaluating the threats to this species, we have determined that no change in the listing priority number for the species is appropriate. The Bogota rail does not represent a monotypic genus. It faces threats that are high in magnitude due to the pressures on the species' habitat. Its range is very small and is rapidly contracting because of widespread habitat loss and degradation (agricultural encroachment, erosion, dyking, and eutrophication). The population is believed to be between 1,000 and 2,499 individuals, and the population trend is believed to be rapidly declining. The factors affecting the species are occurring now, are ongoing, and are therefore imminent. Thus, the LPN remains at 2 to reflect imminent threats of high magnitude.

Takahe (*Porphyrio hochstetteri*), LPN = 8

Species Description

The takahe, a flightless rail endemic to New Zealand, is the world's largest extant (living) member of the rail family (del Hoyo *et al.* 1996). *Porphyrio mantelli* was split into *P. mantelli* (extinct) and *P. hochstetteri* (extant) (Trewick 1996). Takahe territories are between several hectares to more than 100 ha (247 acres) depending on the availability of their preferred food sources (Lee and Jamieson 2001, p. 57). Takahe defend their territories aggressively against other takahe, which means that they will not form dense colonies even in optimal habitat. They are long-lived birds, probably living between 14 and 20 years (Heather and Robertson 1997) and have a low reproductive rate, with clutches consisting of one to three eggs. The species forms life-long pair bonds and generally occupy the same territory throughout life (Reid 1967). Generally, only a few pairs in the wild manage to consistently rear more than one chick each year.

Population and Range

Historically, takahe were common throughout most coastal and eastern parts of the South Island of New Zealand (Grueber and Jamieson 2011, p. 384; Grueber and Jamieson 2008, p. 384). Today, the species is present in the Murchison and Stuart Mountains and was introduced to five island reserves and one privately owned island (Wickes *et al.* 2009, p. 10; Collar *et al.* 1994). Small groups of takahe were introduced to Maud Island in the Marlborough Sounds, Mana and Kapiti Islands north of Wellington, Tiritiri Matangi Island in the Hauraki Gulf northeast of Auckland, and Maungatautari Ecological Island, Waikato. The population in the Murchison Mountains of Fiordland National Park, South Island, is the only mainland population and that has the potential for sustaining a large, viable population (New Zealand Department of Conservation (NZDOC) 2010; 2009b; 2007; Bunin and Jamieson 1996).

When rediscovered in 1948, it was estimated that the takahe population consisted of about 260 pairs (Heather and Robertson 1997; del Hoyo 1996). In 1981, the population reached a low of an estimated 120 birds. As of 2010, it was estimated that there were about 100 birds in the wild in the Murchison Mountains (NZDOC 2010), but there may be up to 300 in this area (*http://www.mitre10takaherescue.co.nz*, accessed July 17, 2012). Currently, there are approximately 350 individuals that are receiving conservation efforts (Grueber *et al.* 2012, p. 4; Wickes *et al.* 2009).

Factors Affecting the Species

Several factors have led to the decline in the species' population. Factors that had affected this species in the past included hunting, a competitor (the introduced brush-tailed possum (*Trichosurus vulpecula*)), and predators

such as stoats (*Mustela erminea*) and the threatened weka (*Gallirallus australis*), a flightless woodhen that is endemic to New Zealand (BLI 2010c). The NZDOC ran a trial stoat control program in a portion of the takahe Special Area to measure the effect on takahe survival and productivity. Initial assessment indicated that the control program had a positive influence (NZDOC 2009, pp. 35–36); however, occasionally, stoat eradication still occurs as needed.

Now the primary factors affecting the species are limited suitable habitat and a very small population size (Grueber *et al.* 2012, pp. 1–5); however, other factors that likely affect this species are discussed in this section. Although there are no known diseases that are currently a concern in the takahe, diseases in avian species are currently a concern in New Zealand and are being monitored (McLelland *et al.* 2011, pp. 163–164).

Studies suggest the level of inbreeding may be underestimated for this species because this species has persisted at a small population size for over 150 years (Grueber and Jamieson 2011, p. 392; Grueber *et al.* 2010, pp. 7–9). Relative to other species, the takahe has low genetic diversity (Grueber *et al.* 2010, pp. 7–9). There is growing evidence that inbreeding can negatively affect small, isolated populations. Inbreeding can result in reduced fitness potential and higher susceptibility to biotic and abiotic disturbances in the short term, and an inability to adapt to environmental change in the long term.

After substantially decreasing in numbers, the species experienced a loss of fitness as a result of recent inbreeding (Grueber *et al.* 2011; Grueber and Jamieson 2008, p. 649). Small populations generally recover slowly from catastrophic events (Crouchley 1994); this is a concern because this species has such a small population size (approximately 350 individuals). To increase the population, NZDOC has been removing some eggs from the wild, captive rearing them, and reintroducing them back into the wild (also refer to Conservation Status, below) (Grueber *et al.* 2012, p. 1; NZDOC 2009, p. 26).

Lead exposure may affect this species on some of the islands (Youl 2009, pp. 79–83). Lead levels in the island populations were found to be higher than those on the mainland. Older buildings on some of the island contain lead paint. One or more takahe breeding pairs were located near buildings containing lead-based paint. A family group on one island that was close to a building containing lead paint was found to have significantly higher lead levels than a family group located away from buildings (Youl 2009, p. 80). Lead has been found to affect the learning capacity of avian species (Youl 2009, pp. 11–13). This exposure to lead may cause decreased fitness of takahe.

Severe weather may also be a limiting factor to the takahe (BLI 2010c; Bunin and Jamieson 1995). Weather patterns in the Murchison Mountains vary from year to year. High chick and adult mortality may occur during extraordinarily severe winters, and poor breeding may result from severe stormy weather during spring breeding season (Crouchley 1994). The severity of winter conditions adversely affects survivorship of takahe in the wild, particularly of young birds (Maxwell and Jamieson 1997).

Another factor of concern is that the mainland population and the populations on the island reserves may be at carrying capacity (Grueber *et al.* 2012, p. 1; Jamieson 2010, p. 122; Wickes *et al.* 2009, p. 29; Greaves 2007, p. 17). Rareness of a vital component of its diet, *C. conspicua*, may be a limiting factor affecting the lack of viability of the takahe population (Wickes *et al.* 2009, pp. 39–40). *C. conspicua* is less common in the forest understory in the Takahe Special Area than it was historically. NZDOC has conducted research and has attempted to reintroduce and increase the prevalence of this plant species in the Murchison Mountains Reserve (Wickes *et al.* 2009, pp. 39–40). The island populations now primarily consume introduced grasses (BLI 2010c). Some researchers have theorized that consumption of these nonnative species may contribute to inadequate nutrition and subsequent nest failure (Jamieson 2003, p. 708); however, this theory has not been confirmed.

Conservation Status

The takahe is listed as endangered on the IUCN Red List because it has an extremely small population (BLI 2012). It is not listed in any appendices of CITES; international trade is not a concern. New Zealand considers the takahe to be an endangered species, and it is classified as nationally critical under the New Zealand Threat Classification System. The NZDOC, through its 2007–2012 Takahe Recovery Plan, is managing the populations of the species through various conservation efforts such as captive breeding, population management, eradication of predators, and management of grasslands (Wickes *et al.* 2009, p. 9). The Takahe Recovery Group has explored strategies to increase the productivity of the island populations by establishing new island sites or relocating some birds to the Fiordland population (Grueber *et al.* 2012, p. 4). The NZDOC has been involved in a captive-breeding and release program to improve takahe recovery since 1983 (NZDOC 2009, p. 29). Excess eggs from wild nests are managed to produce birds suitable for releasing back into the wild population in the Murchison Mountains.

Some of these captive-reared birds have been used to establish five predator-free, offshore island reserves. Overall, this species' population numbers fluctuate annually, but appear to be slowly increasing due to intensive management of the island reserve populations (Grueber *et al.* 2012, pp. 1–5; Wickes *et al.* 2009). Pest eradication on Motutapu Island (1,500 ha) (3,707 ac) may provide suitable habitat for this species (Grueber *et al.* 2012, p. 4). These captive-breeding efforts have increased the rate of survival of chicks reaching 1 year of age from 50 to 90 percent (Wickes *et al.* 2009). Although takahe that were translocated to the islands had higher rates of egg infertility and low hatching success when they breed (Jamieson & Ryan 2000), there has been recent breeding success. In 2010, NZDOC reported that at least 21 chicks hatched on predator-free islands, and, for the first time, the mainland population on Maungatautari Ecological Island, Waikato, produced a chick, indicating an improvement in conservation efforts.

In the previous ANOR, the takahe received an LPN of 8. After reevaluating the threats to the takahe, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted at this time. The takahe does not represent a monotypic genus. The current population is small (approximately 350 individuals), and the species' distribution is extremely limited. Although it has a small population, limited suitable habitat, and may experience inbreeding depression, because the NZDOC is actively involved in measures to aid the recovery of the species (Grueber *et al.* 2012; Wickes *et al.* 2009, 58 pp.; NZDOC 2009e, 3 pp.), we find the threats that are moderate in magnitude. The NZDOC has implemented a captive breeding and release program to supplement the mainland population, and established several offshore island reserves. However, despite conservation efforts, the threats are ongoing and, therefore, imminent. Lack of suitable habitat and predation, combined with the takahe's small population size and naturally low reproductive rate, are threats to this species that are moderate in magnitude. Thus, the LPN remains at 8 to reflect

imminent threats of moderate magnitude.

Chatham Oystercatcher (*Haematopus chathamensis*), LPN = 8

Species and Habitat Description

The Chatham oystercatcher is the most rare oystercatcher species in the world (NZDOC 2001). It is endemic to the Chatham Island group (Schmechel and Paterson 2005; Marchant and Higgins 1993), which is 860 km (534 mi) east of mainland New Zealand. The Chatham Island group consists of two large, inhabited islands (Chatham and Pitt) and numerous smaller islands. Two of the smaller islands (Rangatira and Mangere) are nature reserves. The Chatham Island group has an ecosystem that consists of biota that is quite different from New Zealand's mainland. The remote marine setting, distinct climate, and physical makeup have led to a high degree of endemism (Aikman *et al.* 2001). The southern part of the Chatham oystercatcher range is dominated by rocky habitats with extensive rocky platforms. The northern part of the range is a mix of sandy beach and rock platforms (Aikman *et al.* 2001); however, the species exhibits preference for intertidal rock platforms and wide sandy beaches (Schmechel and Paterson 2005, p. 5).

Pairs of Chatham oystercatchers occupy their territory all year, while juveniles and subadults form small flocks or occur alone on vacant sections of the coast. Their scrape nests (shallow-rimmed depressions in soil or vegetation) are usually formed on sandy beaches just above spring-tide and storm-surge level or among rocks above the shoreline and are often under the cover of small bushes or rock overhangs (Heather and Robertson 1997).

Population and Range

Records of the Chatham Island oystercatcher indicate that, historically, this species has likely always existed as a sparse and small population (Moore 2008, p. 27). Although the population of this species has never likely been very large (Moore 2008, p. 27), the population has increased since the 1970s to approximately 300 birds due to predator control and habitat protection (NZ DOC 2012; Moore 2009b, p. 32; Moore 2005a). In the early 1970s, the Chatham oystercatcher population was approximately 50 birds (Moore 2008, p. 20; del Hoyo 1996).

The islands of Mangere and Rangatira were designated as Nature Reserves in the 1950s, and efforts began to save the native bird species including the removal of sheep in the 1960s. However, the Chatham oystercatcher population has not done well on those islands (Moore 2008, p. 29). Over the last 20 years, the population on South East Island (Rangatira), an island free of mammalian predators, has gradually declined since the 1970s for unknown reasons (Moore 2009a, p. 9; Schmechel and O'Connor 1999). The decline is likely due to large waves during sea storms, which have destroyed the nests (Moore 2009a, p. 9). The distribution of oystercatchers in the Chatham Islands has changed from a southern to a northern dominance since 1970 (Moore 2008, p. 25). In the 1970s, 65 percent of the population was found on the southern three islands (Pitt, Mangere and Rangatira) and 35 percent on Chatham Island. As of 2006, 81 percent of the population was on Chatham Island (62 percent in northern core census areas) and 19 percent was on the southern islands (Moore 2008, p. 25).

Factors Affecting the Species

Historically, cattle and sheep grazing, which began in the 1840s–1850s, affected this species and its habitat (Moore 2008, p. 28). On Chatham Island, by 1901 there were 60,000 sheep, although they have since been removed. Much of the forest had been burned and cleared (Butler & Merton 1992 in Moore 2008, p. 28), particularly in coastal areas (Bell & Robertson 1994 in Moore 2008, p. 28).

Predation, nest disturbance, invasive plants, and spring tides and storm surges are factors that significantly impact the Chatham oystercatcher population (NZDOC 2012, p. 2; Moore 2009a, pp. 8–9; Moore 2005; NZDOC 2001). After three summers of video recording, 13 of the 19 nests recorded were predated by cats, but of the remaining six nest failures, weka were responsible for three; red-billed gull, one; sheep-trampling, one; and sea wash, one (Moore 2005b). When a cat was present, eggs usually lasted only 1 or 2 days. The weka, although endemic to New Zealand, is not endemic to the Chatham Islands, and was introduced in the early 1900s. Weka were observed preying upon this species three times through camera trapping between 1999 and 2001 (Moore 2009a, p. 8). Weka is not considered as severe a threat to the Chatham oystercatcher as feral cats because weka only prey on eggs when adult oystercatchers are not present.

Severe reduction in Chatham oystercatcher numbers is attributed primarily to heavy predation by cats (*Felis catus*) and weka (Moore 2009a, p. 8) (NZ 2012). Feral cats have become established on two of the Chatham Islands after being introduced as pets. Video cameras placed to observe nests indicated that feral cats are a major nest predator. Other predators include the native red-billed gull (*Larus scopulinus*) and southern black-backed gull (*L. dominicanus*) (Moore 2005b).

Nest destruction and disturbance is caused by people fishing, walking, or driving on or near nests. When a nesting area is disturbed, adult Chatham oystercatchers often abandon their eggs for up to an hour or more, leaving the eggs vulnerable to opportunistic predators. Eggs are also trampled by livestock (Moore 2005a), and, in one case, a sheep was observed lying on a nest (Moore 2009b, p. 21).

Another obstacle to Chatham oystercatcher populations is habitat degradation. Marram grass (*Ammophila arenaria*) introduced to New Zealand from Europe to protect farmland from sand encroachment (Moore 2008, p. 28) has spread to the Chatham Islands where it binds beach sands forming tall dunes with steep fronts. In many marram-infested areas, the strip between the high-tide mark and the fore dunes narrows as the marram advances seaward. The dense marram grass is unsuitable for nesting (Moore 2008, p. 28; Moore and Davis 2005). Consequently, the Chatham oystercatcher is forced to nest closer to shore where nests are vulnerable to tides and storm surges. In a study done by Moore and Williams (2005), the authors found that, along the narrow shoreline, many eggs were washed away and the adults would not successfully breed without human intervention. Oystercatcher eggs were moved away from the shoreline by fieldworkers and placed in hand-dug scrapes surrounded by tidal debris and kelp.

Conservation Status

The Chatham oystercatcher is listed as critically endangered by the NZDOC (2010d), making it a high priority for conservation management (NZDOC 2007). It is classified as "Endangered" on the IUCN Red List because it has an extremely small population (BLI 2012). It is not listed in any appendices of CITES.

The birds of the Chatham Island group receive limited protection in part due to their remote location and subsequent inaccessibility (McBride 2011, p. 108). The NZDOC focused conservation efforts in the early 1990s on predator trapping and fencing to limit domestic stock access to nesting areas. In 2001, the NZDOC published the Chatham Island Oystercatcher Recovery Plan 2001–2011 (NZDOC 2001, 24 pp.), which prescribed actions such as translocation of nests away from

the high-tide mark and nest manipulation to further the conservation of this species. These actions may have helped to increase hatching success (NZDOC 2008b). Artificial incubation has been attempted but has not increased productivity. Additionally, livestock have been fenced and signs erected to reduce human and dog disturbance. Control of the invasive Marram grass has been successful in some areas. Intensive predator control combined with nest manipulation has resulted in a high number of fledglings (BLI 2009; NZDOC 2008).

In the previous ANOR, the Chatham oystercatcher received an LPN of 8. After reevaluating the threats to this species, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted at this time. The Chatham oystercatcher does not represent a monotypic genus. The current population estimate is very small (approximately 350 individuals), and the species has a limited range. Although the NZDOC has taken measures to aid the recovery of the species (the species' population is slowly increasing on some islands), the species continues to face threats (predation, trampling, low population numbers, and potential loss due to storm surges) that are moderate in magnitude (McBride 2011, pp. 108, 110; Moore 2008, p. 30). However, the threats are still ongoing and, therefore, imminent. The LPN remains an 8 to reflect imminent threats of moderate magnitude.

Orange-Fronted Parakeet (*Cyanoramphus malherbi*), LPN = 8

Taxonomy

The orange-fronted parakeet, endemic to New Zealand, was treated as an individual species until it was proposed to be a color morph of the yellow-crowned parakeet, *C. auriceps,* in 1974 (Holyoak 1974). Further taxonomic analysis indicated that it is a distinct species (Kearvell *et al.* 2003). IUCN, BLI, and ITIS all recognize *Cyanoramphus malherbi* as a full species (ITIS 2010, accessed July 16, 2010). The common name "orange-fronted parakeet" is used by BirdLife International (2000, 2004) as the common name for *Aratinga canicularis,* which is native to Costa Rica. Because New Zealand continues to refer to this species as the orange-fronted parakeet, we will use this common name in this document. Absent peer-reviewed information to the contrary, we consider *Cyanoramphus malherbi* to be a valid species.

Species Description

This species, also known as Malherbe's Parakeet or the käkäriki, is primarily green with yellow and orange coloring on its head above its bill with some blue wing feathers. The female lays between five and eight eggs and the eggs take 21–26 days to incubate. During mast years (a year in which vegetation produces a significant abundance of mast, or fruit), when there is a high abundance of seed production by *Nothofagus species* (beech trees), parakeet numbers can increase substantially; breeding has been linked with food availability.

On South Island, seeds of *Nothofagus* species were observed to be a major component of its diet (Kearvall *et al.* 2002, pp. 140–145). On the mainland, the species is reliant on old mature beech trees with natural cavities for nesting, but on the islands where it has been introduced, it is less selective in its nest sites (Ortiz-Catedral and Brunton 2009, p. 153). In other areas where it has been introduced, it feeds on a variety of other food sources. On Maud Island, a primary component of its diet was *Melicytus ramiflorus* (mahoe) (Ortiz-Catedral and Brunton 2009, p. 385). In addition to eating seeds, the orange-fronted parakeet feeds on fruits, leaves, flowers, buds, and small invertebrates (NZ DOC 2012, p. 1).

Population and Range

This species is described as never having been common (Mills and Williams 1979). The orange-fronted parakeet has an extremely small and fragmented population in addition to a limited range (BLI 2012). BLI estimates its population in the wild is between 50 and 249 individuals (BLI 2012). NZDOC's population estimate as of 2009 was between 100 and 200 individuals remaining in the wild. Between 2007 and 2009, researchers introduced 62 birds to Maud Island, which has been designated as a scientific reserve and consists of 296 hectares (731 ac). Seventy-one birds have been relocated to Tuhua Island, and these birds appear to be breeding successfully (Fauna Recovery NZ 2012, p. 1).

At one time, the orange-fronted parakeet was scattered throughout most of New Zealand (Harrison 1970). During the 19th century, the species' distribution included South Island, Stewart Island, and a few other offshore islands of New Zealand (NZDOC 2009a), but in the Southern Alps it is now only found in a few North Canterbury valleys (*http://www.teara.govt.nz/en/small-forest-birds/10*). This species historically inhabited southern beech forests, with a preference for areas bordering stands of *N. solandri* (mountain beech) (del Hoyo 1997; Snyder *et al.* 2000; Kearvell 2002).

The South Island populations are located within a 30-km (18.6-mi) radius in beech (*Nothofagus* spp.) forests of upland valleys (Hawdon and Poulter valleys). These valleys are within Arthur's Pass National Park and the Hurunui South Branch in Lake Sumner Forest Park in Canterbury, South Island (NZDOC 2009a). Orange-fronted parakeets have been relocated to predator-free Chalky Island in Fiordland, Maud Island, Tuhua Island off Tauranga, and in 2011, Blumine Island (Butterfield 2011; Elliott and Suggate 2007; Ortiz-Catedral and Brunton 2009, p. 385). It is unclear whether the population trend is declining or stable (Fauna Recovery NZ 2012; NZDOC 2009a).

Factors Affecting the Species

There are several reasons for the species' continuing decline; one of the most prominent factors affecting the species is believed to be predation by species that are not native to the island such as stoats (*Mustela erminea*) and rats (*Rattus* spp.) (NZ 2012, p. 1). Large numbers of stoats and rats in beech forests have caused large losses of parakeets (NZDOC 2009c). Both species of predators are excellent hunters on the ground and in trees. They predate parakeet nests in tree cavities, which impacts primarily females, chicks, and eggs (NZDOC 2009c).

Habitat loss and degradation are two other factors that have affected the orange-fronted parakeet's suitable habitat (NZDOC 2006, p. 2). Large areas of native forest have been felled or burned, decreasing the habitat available for parakeets (NZDOC 2009c). Silviculture of beech forests in the past had removed trees at an age when few would become mature enough to develop suitable cavities for species such as the orange-fronted parakeet (Kearvell *et al.* 2002, p. 261). The species' habitat is also degraded by brush-tailed possum (*Trichosurus vulpecula*), cattle, and deer, which all browse on plants, subsequently changing the forest structure (NZDOC 2009c). This is problematic for the orange-fronted parakeet, which feeds on seeds and insects on the ground and low-growing shrubs (Kearvell *et al.* 2002, p. 261).

Other impacts to this species' viability exist. These include: (1) Increased competition between the orange-fronted parakeet and the yellow-crowned

parakeet for nest sites and food in a habitat that has been significantly modified by humans; (2) competition with introduced finch species (species unknown); and (3) competition with introduced wasps (*Vespula vulgaris* and *V. germanica*), which compete with parakeets for invertebrates as a dietary source (Kearvell *et al.* 2002). Hybridization with other species was a concern—the orange-fronted parakeet was thought to hybridize with the yellow-crowned parakeets (*C. auriceps*) at Lake Sumner (Snyder *et al.* 2000). However, researchers have introduced orange-fronted parakeets to islands where they are not likely to overlap in range with other parakeet species (Ortiz-Catedral 2011, pp. 152–162).

Beak and Feather Disease Virus (BFDV) has been a concern for the NZDOC, and the disease was discovered in wild native birds on South Island for the first time in 2011 (Massaro *et al.* 2012, unpaginated). The disease affects both wild and captive birds, with chronic infections resulting in feather loss and deformities of beak and feathers. Birds usually become infected in the nest by ingesting or inhaling virus particles. Birds will either develop immunity, die within a couple of weeks, or become chronically infected. We know of no vaccine in existence to immunize populations. However, the NZDOC is aware of the potential effect on the species, and efforts are in place to protect the orange-fronted parakeet from this disease (Ortiz-Catedral *et al.* 2010, pp. 618–619).

Conservation Status

The NZDOC (2009b) considers the orange-fronted parakeet to be the most rare parakeet in New Zealand. Because it is classified as "Nationally Critical" with a high risk of extinction, the NZDOC has been working intensively to ensure its survival. The species is also listed as "critically endangered" on the IUCN Red List. It is listed in Appendix II of CITES; however, trade is not currently a concern (CITES 2010).

The NZDOC closely monitors all known populations of the orange-fronted parakeet. Nest searches are conducted, nest cavities are inspected, and surveys are conducted in other areas to look for evidence of other populations. Because the NZDOC determined that the species' largest threat is predation, they initiated a program to remove predators in some parts of the species' range. "Operation ARK" is an initiative to respond to predator problems in beech forests in order to prevent species' extinctions, including orange-fronted parakeets. Predators are methodically controlled with traps, bait stations, bait bags, and aerial spraying, when necessary (Wickes *et al.* 2009). The NZDOC also implemented a captive-breeding program for the orange-fronted parakeet. Using captive-bred birds from the program, NZDOC established several self-sustaining populations of the orange-fronted parakeet on predator-free islands. The NZDOC monitors wild nest sites and is actively managing the conservation of the species. Despite these controls, predation by introduced species is still a factor affecting the species because predators have not been completely eradicated from this species' range.

In the previous ANOR, the orange-fronted parakeet received an LPN of 8. After reevaluating the factors affecting the orange-fronted parakeet, we have determined that no change in the classification of the magnitude of threats to the species is warranted because NZDOC is actively managing the species and the species' population seems to have stabilized. The orange-fronted parakeet does not represent a monotypic genus. Although the species' available suitable nesting habitat in beech forests is extremely limited, translocations have taken place and seem to be successful (Fauna Recovery NZ 2012). Additionally, the current population is small (approximately 350 individuals), and the species' distribution is extremely limited, but threats are being mitigated. The species faces threats (competition for food and suitable nesting habitat within highly altered habitat, predation, and habitat degradation) that are moderate in magnitude because the NZDOC has taken measures to aid the recovery of the species. However, because the overall population of this species is very small and it could be affected by BFDV, we find that the threats to this species are still imminent. Thus, the LPN remains at 8 to reflect imminent threats of moderate magnitude.

Uvea parakeet (*Eunymphicus uvaeensis*), LPN = 8

Species and Habitat Description

The Uvea parakeet is endemic to a small island in New Caledonia, and is found primarily in old-growth forests, specifically those dominated by the pine tree *Agathis australis* (del Hoyo *et al.* 1997). The island is predominantly limestone and lacks deep soil layers (Boon *et al.* 2008, p. 257).

Uvea parakeets feed on fruit, berries, and flowers and seeds of native trees and shrubs (Robinet and Salas 2003, p. 71; del Hoyo *et al.* 1997). They also feed on a few types of crops in cultivated land adjacent to their habitat. The greatest number of birds is seen close to gardens with papayas (BLI 2010f). A significant characteristic is that Uvea parakeets nest in cavities of native trees; so the absence of suitable trees and nesting cavities may be a limiting factor (Robinet and Salas 2003, p. 71). Their clutch size is generally two to three eggs; and they are known to have another clutch if the first set of eggs is destroyed (BLI 2010f).

Taxonomy

The Uvea parakeet, previously known as *Eunymphicus cornutus*, is now recognized as a full species (Barré *et al.* 2010, p. 695; Boon *et al.* 2008, p. 251). Research presented in 2008 indicates that the Uvea parakeet, based on genetic, ecological, behavioral, and biogeographical evidence, is so markedly distinct that it warrants status as a species (Boon *et al.* 2008, p. 259). ITIS considers the Uvea parakeet to be a subspecies, *Eunymphicus cornutus uvaeensis* (ITIS 2012, accessed July 17, 2012). However, based on the best scientific and commercial data available, we consider the Uvea parakeet to be *E. uvaeensis*.

Habitat and Range

The Uvea parakeet is found only on the island of Uvea (also known as both Ouvéa Island and Wallis Island) in the Loyalty Archipelago, New Caledonia (a territory of France) in the South Pacific Ocean. The island is approximately 1,500 km (932 mi) east of Australia. Uvea Island is 110 km^2 (42 mi^2) in size (Juniper and Parr 1998). Most Uvea parakeets occur in a forested area consisting of about 20 km^2 (7.7 mi^2) in the north of the island, although some individuals are found in strips of forest on the northwest isthmus and in the southern part of the island, with a total potential habitat of approximately 66 km^2 (25.5 mi^2) (BLI 2010f).

Population

One survey of Uvea parakeet in the early 1990s estimated that the population was between 70 and 90 individuals (Hahn 1993). However, another survey in 1993 (Robinet *et al.* 1996) yielded an estimate of between 270 and 617 individuals. In 1999, it was believed that 742 individuals lived in northern Uvea, and 82 were in the south of the Island (Primot 1999 as cited in BLI 2010f). Six surveys conducted between 1993 and 2007 indicated a steady increase in population numbers in both areas (Verfaille *in litt.* 2007 as cited in BLI 2010f). The current population estimate is between 1,280

and 3,413 individuals (IUCN 2012; Barré *et al.* 2010, p. 695).

Factors Affecting the Species

The primary factors that had affected this species have been the capture of juveniles for the pet trade (Barre *et al.* 2010, pp. 695, 699). Capture of juvenile parakeets for the pet trade involves cutting open nesting cavities to extract nestlings, which renders the holes unsuitable for future nesting. However, since restrictions have been put into place and the species has been monitored in association with its recovery plan (see *Conservation Status* section below), it appears that nest poaching is no longer occurring such that it significantly affects this species (Barre *et al.* 2010, p. 699). Since conservation awareness programs and protections such as guards were put into place, the population has increased. However, because the human population on the island is increasing, encroachment and other factors continue to be concerns.

This species' status is still tenuous due to its small population size. The primary factors affecting this species are now believed to be the lack of nesting sites, predation, and competition from bees for nesting sites (Barre *et al.* 2010, pp. 695, 699; Robinet *et al.* 2003, pp. 73, 78). Introductions of Uvea parakeets to the adjacent island of Lifou (to establish a second population) in 1925 and 1963 failed (Robinet *et al.* 1995 as cited in BLI 2009), possibly because of the presence of ship rats and Norway rats (Robinet *in litt.* 1997 as cited in Snyder *et al.* 2000).

Preventive measures have been taken at the main seaport of entry to the island and airport to prevent introduction of rats, but there is concern that rats may be accidentally introduced in the future (BLI 2010, p. 3). As of 2010, the island was rat-free (Barre *et al.* 2010, p. 696). Although current Uvea parakeet numbers are increasing, any relaxation of conservation efforts or introduction of nonnative rats, other predators (particularly cavity-nesting bees, the ship rat, and the Norway rat), or invasive species could lead to a rapid decline (BLI 2010f; Robinet *et al.* 1998). Artificial nests are being installed to increase available nesting sites, and BirdLife Suisse (ASPO) is continuing to destroy invasive bees' nests and is placing hives in forested areas to attract bees for removal (Verfaille *in litt.* 2007 as cited in BLI 2010f).

Conservation Status

This species is listed as "Endangered" on the IUCN Red List (IUCN 2012). Protection for this species increased when it was uplisted to Appendix I of CITES from Appendix II in July 2000. This action was due to its small population size, restricted area of distribution, loss of suitable habitat, and the illegal pet trade (CITES 2000b). Various conservation measures are in place for this species. A recovery plan for the Uvea parakeet was developed by the Association for the Protection of the Ouvéa Parakeet for the period 1997–2002, which included strong local participation in population and habitat monitoring (Robinet *in litt.* 1997 as cited in Snyder *et al.* 2000). A second recovery plan was initiated in 2003. The species increased in popularity and is now celebrated as an island emblem (Primot *in litt.* 1999 as cited in BLI 2009; Robinet and Salas 1997). *In-situ* management (habitat protection and restoration such as providing nest boxes and food) and public education about the Uvea parakeet and its habitat occur (Barre *et al.* 2010, p. 699; Robinet *et al.* 1996). Increased awareness of the plight of the Uvea parakeet and improvements in law enforcement capability are helping to address illegal trade of the species.

In the previous ANOR, the Uvea parakeet received an LPN of 2. We reevaluated the threats to the Uvea parakeet and determined that a change in the LPN for the species is warranted because the population has significantly increased and now its population is estimated to be between 1,280 and 3,413 individuals. The Uvea parakeet does not represent a monotypic genus and it is an island endemic with limited suitable habitat (Barre *et al.* 2010, p. 695). The Uvea parakeet continues to experience a tenuous situation primarily due to the lack of the old-growth forest on which the birds depend for nesting holes. Management of the species has resulted in an increase in the population; therefore, the threats are moderate in magnitude. Because the species has increased in size due to conservation education, a ban on commercial trade and a reduction in poaching, we have changed the LPN from 2 to 8 to reflect imminent threats of moderate magnitude.

Helmeted woodpecker (*Dryocopus galeatus*), LPN = 8

Species and Habitat Description

The helmeted woodpecker is sympatric (co-occurs) with two other woodpeckers that are similar in appearance: the lineated woodpecker (*Dryocopus lineatus*) and the robust woodpecker (*Campephilus robustus*). The helmeted woodpecker is a fairly small woodpecker (27–29 cm (10.6–11.4 in) in length). It has a cinnamon face, containing no white markings, barred underparts, brown-black wings, a white rump, and a large, rounded red crest on its head (Lammertink *et al.* 2012, unpaginated). Common names for this species include Carpintero cara canela (Spanish) and pica-pau-de-cara-canela (Portuguese). It typically forages in the mid-story of the tree canopy and has been observed eating larvae, ants, berries, and small fruit (Bodrati, personal observation). It prefers to nest in tree cavities of dead or decaying trees, but has been observed in tree cavities of a live anchico tree (*Parapiptadenia rigida*) and a live grapia tree (*Apueleia leiocarpa*). Its habitat type consists of tropical and subtropical moist forests, tropical dry forests, and mangrove forests at mostly low-to-medium elevations less than 1,000 m (3,281 ft); however, altitude in the Atlantic Forest region can reach as high as 2,000 m (6,562 ft) above sea level.

This species exhibits an unusual behavior of sharing nest cavities with other bird species. It was observed sharing a nest cavity with white-eyed parakeets (*Aratinga leucophthalma*) in 2009 and with white-throated woodcreepers (*Xiphocolaptes albicollis*) in 2010. However, in one instance, there was conflict between two species, and the conflict may have resulted in clutch failure of the helmeted woodpecker (Lammertink *et al.* 2012, unpaginated).

Population

The helmeted woodpecker's population is believed to have declined sharply between 1945 and 2000 in conjunction with the clearing of mature forest habitat (Lammertink *et al.* 2012). Although forest clearing has recently slowed, the population of this species is still believed to be declining. Because the helmeted woodpecker is difficult to locate except when vocalizing and it is silent most of the year, its population size is difficult to determine. The most recent estimate of its population is between 400 and 8,900 individuals and decreasing, but experts believe its population is more likely closer to the smaller estimate (Lammertink *et al.* 2012, unpaginated; Bodrati 2010, unpaginated).

Range

This species is endemic to the southern Atlantic forest region of southeastern Brazil, eastern Paraguay, and northeastern Argentina (Lammertink *et al.* 2012, p. 1). Its estimated range is likely between 25,000 and 40,000 km² (9,653 and 15,444 mi²), which is reduced from a historical distribution of 661,330 km² (255,341 mi²). The Atlantic Forest extends along

the Atlantic coast of Brazil from Rio Grande do Norte in the north to Rio Grande do Sul in the south, and inland as far as Paraguay and Misiones Province of northeastern Argentina (Conservation International 2007a, p. 1; Höfling 2007, p. 1; Morellato and Haddad 2000, pp. 786–787). The Atlantic Forest extends up to 600 km (373 mi) west of the Atlantic Ocean.

The territory or home range requirements for this species are unclear, however, in 2010, two nests in Intervales State Park, Brazil, were located 2.4 km (1.49 mi) apart from each other (Junior, pers. comm. in Lammertink *et al.* 2012, unpaginated). The species is not common anywhere it is known to exist (BLI 2010h). Lammertink *et al.* 2012 note that in old-growth sites this species may reach densities estimated at one territory per 3 to 5 km^2 (1.2 to 1.9 mi^2) (Brooks *et al.* 1993, Esquivel pers. comm., Bodrati pers. obs.).

In Paraguay, the species is known from the eastern half of the country, in the departments of Amambay, San Pedro, Canindeyú, Caaguazú, Alto Paraná, Guairá, Cazaapá, Itapúa, and Paraguarí (Lammertink *et al.* 2012, unpaginated; Collar *et al.* 1992, Hayes 1995). In Argentina, it is only known from Misiones province. In Brazil, it occurs in the states of São Paulo, Paraná, Santa Catarina, and Rio Grande do Sul.

It is found generally in mature montane forest along the Atlantic coast from sea level up to elevations of 1,000 m (3,280 ft). The species has been recorded in degraded and small forest patches; however, it is usually found in or near large undisturbed forested tracts (Cockle 2010; Chebez 1995b as cited in BLI 2010h; Clay *in litt.* 2000 as cited in BLI 2010h). This species is often absent from large tracts of apparently suitable habitat (Collar *et al.* 1992). For example, local ornithologists indicate that large portions of Iguazú National Park (550 km^2 of mature forest), appear not to be or are rarely used by this species (Castelino and Somay *in litt.* in Lammertink 2010, unpaginated).

Factors Affecting the Species

There is little information available about this species, however, species experts indicate that the factors affecting the species include the reduction of nesting sites, loss of connectivity of suitable habitat, and widespread deforestation (Kohler in litt 2010, unpaginated; Cockle 2008 as cited in BLI 2010h). Its range is believed to be reduced to 20 percent of its original habitat (Lammertink *et al.* 2012, unpaginated). Between 92 and 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; The Nature Conservancy (TNC) 2007, p. 1; World Wildlife Fund (WWF) 2007, pp. 2–41; Saatchi *et al.* 2001, p. 868; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854). Of this, less than one percent of the remaining forest in the range of the helmeted woodpecker is original undisturbed habitat. Most of the forest clearance in the Atlantic Forest occurred between 1945 and 2000 (Galindo-Leal and de Gusmão Câmera 2003), and this was likely the period during which the helmeted woodpecker's population severely declined (Lammertink *et al.* 2012, unpaginated).

A significant portion of Atlantic Forest habitat has been, and continues to be, lost and degraded by various ongoing human activities, including logging, establishment and expansion of plantations and livestock pastures, urban and industrial developments (including new hydroelectric dams), slash-and-burn clearing, and both intentional and accidental ignition of fires (Critical Ecosystem Partnership Fund (CEPF) 2001, pp. 9–15). Even with the passage of a national forest policy and in light of many legal protections in Brazil, the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (Rocha *et al.* 2005, p. 270; CEPF 2001, p. 10; Hodge *et al.* 1997, p. 1). The remaining sites where the helmeted woodpecker currently exists may be lost over the next several years (Rocha *et al.* 2005, p. 263). Furthermore, the helmeted woodpecker's population is already highly fragmented, and its population is believed to be declining parallel with habitat loss (BLI 2010h).

Information suggests that this species does not do as well in secondary, although mature, forest than it does in primary, undisturbed forested areas. There may be an ecological component that is missing from the secondary forest; ecological interactions can be complex and relationships may not always be obvious. When habitat is degraded, there is often a lag time before the species losses are evident (Brooks *et al.* 1999, p. 1140), so the helmeted woodpecker may still be present, despite the low quality of its habitat. Further studies are needed to clarify this species' distribution and status.

This species may not be as competitive as other species whose range overlaps with the helmeted woodpecker. Other species, particularly more aggressive woodpeckers, may compete for nest sites, or they may use fragmented and "edge" habitat more effectively (Lammertink *et al.* 2012, unpaginated; BLI 2010h). The lack of nesting cavities is often a limiting factor for bird species that depend on these cavities for nesting (Sandoval and Barrantes 2009, p. 75; Kyle 2006, p. 8).

In Paraguay, some viable, although fragmented, habitat for this species remains in San Rafael National Park (Esquivel *et al.* 2007, pp. 301–302). However, the park has undergone logging and clearance, and is extremely isolated from other mature forested areas that might be suitable for the helmeted woodpecker (Esquivel *et al.* 2007, p. 302). Fragmentation of populations can decrease the fitness and reproductive potential of the species, which exacerbates other threats.

Conservation Status

The helmeted woodpecker is listed as vulnerable by the IUCN (IUCN 2012). It is not listed in any appendices of CITES (CITES 2012). It is protected by Brazilian law, and populations occur in numerous protected areas throughout its range such as Intervales State Park in Brazil and in San Rafael National Park in Paraguay (Esquivel *et al.* 2007, p. 301; Lowen *et al.* 1996 as cited in BLI 2009; Chebez *et al.* 1998 as cited in BLI 2009).

In the previous ANOR, the helmeted woodpecker received an LPN of 8. After reevaluating the available information, we find that no change in the LPN for the helmeted woodpecker is warranted. The helmeted woodpecker does not represent a monotypic genus. The magnitude of threat to the species is moderate because the species' range is fairly large. The threats are imminent because the forest habitat upon which the species depends is still being altered and degraded. We will continue to monitor the status of this species, however, an LPN of 8 remains valid for this species.

Okinawa woodpecker (*Dendrocopos noguchii* syn. *Sapheopipo noguchii*), LPN = 2

Taxonomy

Often there are differences in the taxonomic classification of species. ITIS recognizes the Okinawa woodpecker, (also known as Pryer's woodpecker) as belonging to the monotypic genus *Sapheopipo* (ITIS 2012, accessed August 17, 2012). IUCN and BLI both recognize this species as *Dendrocopos noguchii*. Japan references it as *Sapheopipo noguchii* (*www.env.go.jp/en/nature/biodiv/reddata.html*,

accessed September 30, 2010). Winkler *et al.* (2005, pp. 103–109) analyzed partial nucleotide sequences of mitochondrial genes and concluded that this woodpecker belongs in the genus *Dendrocopos* which consists of several species (not a monotypic genus). For the purpose of this finding and absent peer-reviewed information to the contrary, we recognize it as *D. noguchii* and will treat *S. noguchii* as a synonym.

Species and Habitat Description

This species of woodpecker prefers undisturbed, mature, subtropical evergreen broadleaf forests, with tall trees greater than 20 cm (7.9 in) in diameter (del Hoyo 2002; Short 1982). Trees of this size are generally more than 30 years old, and as of 1991 were confined to hilltops (Brazil 1991). The species' main breeding areas are thought to be located along the mountain ridges between Mt. Nishime-take and Mt. Iyu-take, although it has been observed nesting in well-forested coastal areas in the northern part of the island (Research Center, Wild Bird Society of Japan 1993, as cited in BLI 2001). The majority of the broadleaf trees in the Yanbaru area are oak and chinquapin (*Distylium racemosum* and *Schefflera octophylla*) (Ito *et al.* 2000, p. 305). Areas with conifers (*Coniferae*, cone-bearing trees such as pines and firs) appear to be avoided (Winkler *et al.* 1995; Short 1973). The Okinawa woodpecker was also observed just south of the Mt. Tano-dake in an area of entirely secondary forest that was too immature for use by woodpeckers to excavate nest cavities, but these may have been birds displaced by the clearing of mature forests (Brazil 1991).

The Okinawa woodpecker feeds on large arthropods, notably beetle larvae, spiders, moths, and centipedes, as well as fruit, berries, seeds, acorns, and other nuts (Winkler *et al.* 2005; del Hoyo 2002; Short 1982). It forages in old-growth forests with large, often moribund trees, accumulated fallen trees, rotting stumps, debris, and undergrowth (Brazil 1991; Short 1973). This species has been observed nesting in holes excavated in large, old growth trees such as *Castanopsis cuspidate* (Japanese chinquapin) and *Machilus thunbergii* (Tabu-no-ki tree) (del Hoyo 2002; Short 1982; Ogasawara and Ikehara 1977). Both of these tree species grow to approximately 20 meters (66 ft) in height. It is thought that *Castanopsis* is the preferred tree species for nesting because it tends to be hollow with hard wood, so that the nesting cavities are more secure (Kiyosu 1965 in BLI 2001, p. 1,880). The number of fledglings per season range between one and three birds (BLI 2001, p. 1,880).

Range

The Okinawa woodpecker is endemic to Okinawa Island, Japan. Okinawa is the largest of the Ryukyu Islands, a small island chain located between Japan and Taiwan (Winkler *et al.* 2005; Stattersfield *et al.* 1998; Brazil 1991). Okinawa is approximately 646 km (401 mi) from Taiwan and 1,539 km (956 mi) from Tokyo, Japan. The island is 108 km (67 miles) in length and its width varies between 3 and 27 km (2 to 17 mi). Okinawa's highest point is Mt. Yonaha at 455 m (1,494 ft). The Okinawa woodpecker is confined to forested areas in the northern part of the island, generally in the Yambaru (also known as Yanbaru) area, particularly in the Yonaha-dake Prefecture Protection Area. Yambaru refers to the mountainous areas of Kunigami County in northern Okinawa.

Population

This species is considered one of the world's most rare extant woodpecker species (Winkler *et al.* 2005). Many observations of this species have recently been made at the Jungle Warfare Training Center, part of the United States Marine Corps (USMC) installation on Okinawa Island (USMC *in litt.* 2012). During the 1930s, the Okinawa woodpecker was considered nearly extinct. In the early 1970s, it was observed to be scattered among small colonies and isolated pairs (Short 1973). By the early 1990s, the breeding population was estimated to be about 75 birds (BLI 2008a). In 2008, its projected 10-year decline was between 30 to 49 percent (BLI 2008b). The current population estimate is between 100 and 390 mature individuals (BLI 2012).

Factors Affecting the Species

Deforestation and the fragmented nature of its habitat due to logging, dam construction, road-building, agricultural development, and golf course construction have been cited to be the main causes of its reduced habitat and decreased population (BLI 2010i). Between 1979 and 1991, 2,443 ha (6,037 ac) of forest were destroyed in the Yanbaru area (Department of Agriculture, Okinawa Prefectural Government 1992, in Ito *et al.* 2000, p. 311). As of 2001, there was only 40 km^2 (15 mi^2) of suitable habitat available for this species (BLI 2001, p. 1882). Most of the habitat loss appears to have ceased; however, it still suffers from limited suitable habitat and a small population size (BLI 2012).

The limited range and tiny population make this species vulnerable to extinction from disease and natural disasters such as typhoons (BLI 2012, p. 54). In addition, the species may be vulnerable to predators due to its tendencies to forage close to the ground. Feral dogs and cats, the introduced Javan mongoose (*Herpestes javanicus*), and weasel (*Mustela itatsi*) are likely predators of the woodpecker (BLI 2012).

Conservation Status

Various protections and conservation measures are in place for this species. The species is categorized on the IUCN Red List as critically endangered because it consists of a small, declining population estimated to be between 100 and 390 mature individuals (BLI 2012). The species is legally protected in Japan, and it occurs in small protected areas in Yambaru (BLI 2012). The Yambaru forested area in the Okinawa Prefecture, was designated as a national park in 1996 (BLI 2010i). The species is also listed in the USMC's 2009 Integrated Natural Resources Management Plan in compliance with the Japan Environmental Governing Standards, to be used by Department of Defense installations in Japan (USMC 2012). Additionally, conservation organizations have purchased sites where the woodpecker occurred in order to establish private wildlife preserves (del Hoyo *et al.* 2002; BLI 2008). It is not listed in any appendices of CITES.

In the previous ANOR, the Okinawa woodpecker received an LPN of 2. After reevaluating the available information, we find that no change in the LPN for the Okinawa woodpecker is warranted. The Okinawa woodpecker does not represent a monotypic genus. It is considered one of the world's most rare extant woodpecker species. The best available information indicates that this species is being actively monitored. However, the threats to the species are of high magnitude due to the scarcity of old-growth habitat (only 40 km^2 (15 mi^2)) upon which the species is dependent. Its very small population is believed to still be declining, and species with fragmented habitat in combination with small population sizes may be at greater risk of extinction due to synergistic effects (Davies *et al.* 2004, pp. 265–271). Although it exists in areas with protected status, the best available information indicates that the threats to the species continue to be ongoing and imminent. Because the species faces threats that are high in magnitude due to its restricted population size, past habitat loss, endemism, and because the current

population estimate ranges between 100 and 390 mature individuals, the LPN for this species remains a 2 to reflect imminent threats of high magnitude.

Yellow-browed toucanet (*Aulacorhynchus huallagae*), LPN = 2

Species and Habitat Description

There is very little information available regarding the yellow-browed toucanet. This species is endemic to Peru and is known from only two locations in north-central Peru—La Libertad, where it is described as uncommon, and Rio Abiseo National Park, San Martin, where it is thought to be very rare (BLI 2012b; del Hoyo *et al.* 2002; Wege and Long 1995). There was also a report of yellow-browed toucanets observed in the Leymebamba area (Mark *in litt.* 2003, as cited in BLI 2010j) of Peru, although there are no available photos of this species to verify this information.

Distinguishing features of the yellow-browed toucanet include a bright yellow vent or cloaca, a blackish bill, and a generally green face, (Schulenberg and Parker 1997, p. 719). Its call has been described as a series of 20 to 30 frog-like "krik" notes, delivered at a rate of slightly more than one note per second (recordings housed in Cornell Laboratory of Ornithology, Schulenberg and Parker 1997, p. 717).

Population and Range

The current population size is believed to be 600–1,500 mature individuals, with a decreasing population trend (BLI 2012, p. 1).

The yellow-browed toucanet's estimated range is 450 km^2 (174 mi^2) (BLI 2012). The species inhabits a narrow altitudinal range between 2,125 and 2,510 m (6,970 and 8,232 ft). It prefers a canopy of humid, epiphyte-laden montane cloud forests, particularly areas that support *Clusia* trees (known as autograph trees) (del Hoyo *et al.* 2002; Schulenberg and Parker 1997, pp. 717–718; Fjeldså and Krabbe 1990). Within the *Clusia* genus, there are about 20 species.

The yellow-browed toucanet does not appear to occupy all potentially suitable forest available within its range (Schulenberg and Parker 1997). The narrow distributional band in which yellow-browed toucanets are found may be related to the occurrence of other avian species that may outcompete the yellow-browed toucanet. Both of the suggested competitors have wider altitudinal ranges that completely encompass the range of the yellow-browed toucanet (del Hoyo *et al.* 2002; Clements and Shany 2001, as cited in BLI 2008; Hornbuckle *in litt.* 1999, as cited in BLI 2009; Collar *et al.* 1992). The larger grey-breasted mountain toucan (*Andigena hypoglauca*) occurs above 2,300 m (7,544 ft), and the emerald toucanet (*Aulacorhynchus prasinus*) occurs below 2,100 m (6,888 ft) (Schulenberg and Parker 1997). The yellow-browed toucanet may occur to the north and south of its known range, but the area between the Cordillera de Colán, Amazonas, and the Carpish region, Huánuco, is inaccessible for surveying, and its existence in other areas has not been confirmed.

Factors Affecting the Species

Deforestation, mining, and secondary impacts associated with those activities such as habitat degradation, erosion, and contamination from mining waste affect this species' habitat. Deforestation within its range has been widespread, but has largely occurred at lower elevations than habitat occupied by the yellow-browed toucanet (Barnes *et al.* 1995; BLI 2009). However, coca growers have taken over forests within its altitudinal range, probably resulting in some reductions in this species' range and population (BLI 2012; Plenge *in litt.* 1993, as cited in BLI 2009). Most of the area in 1997 was described as being only lightly settled by humans (Schulenberg and Parker 1997). However, the human population surrounding the Río Abiseo Park was steadily increasing during the 15 years prior to 2002, primarily due to the advent of mining operations in the area (Obenson 2002). Pressures in and around the park exist due to mining and those secondary impacts associated with mining (Vehkamäki and Bäckman 2006, pp. 1–2).

Conservation Status

The yellow-browed toucanet is listed as endangered on the IUCN Red List due to its very small range and population records from only two locations (BLI 2012). It occurs in at least one protected area, the Rio Abiseo National Park, a World Heritage Site which was established to protect fauna (UNEP–WCMC 2008, p. 1). It is not listed in any appendices of CITES (CITES 2012). No other protections are known, but see *Pauxi unicornis* for a discussion of applicable laws in Peru.

In the previous ANOR, the yellow-browed toucanet received an LPN of 2. After reevaluating the available information, we find that no change in the LPN for the yellow-browed toucanet is warranted. The yellow-browed toucanet does not represent a monotypic genus. As of 2010, BLI reported that coca-growers have taken over forest within its altitudinal range (BLI 2010j). The magnitude of threats to the species is high given that the species has a very small range and declining population and may be in competition for habitat with more competitive avian species. Additionally, the only records of this species are from two small locations, and they have not been verified in several years. Thus, the LPN for this species remains a 2 to reflect imminent threats of high magnitude.

Brasilia tapaculo (*Scytalopus novacapitalis*), LPN = 11

Taxonomy

Within the *Scytalopus* genus, there are several species (Raposo and Kirwan 2008, p. 80). The Brasilia tapaculo is a common name that could refer to several species within the *Scytalopus* genus (Raposo *et al.* 2006, p. 37). *S. novacapitalis* is described as occupying the northwestern part of the overall range (from Brasília south to western Minas Gerais—the central to southern-central region of the country); *S. pachecoi* is described as occupying Rio Grande do Sul, Santa Catarina, and northeastern Argentina; *S. diamantinensis* is described as occupying the northernmost part of Brazil; and two species: *S. speluncae* and *Scytalopus* sp. *nov.* (possibly *S. novacapitalis* but the taxonomy is unclear) occupy the central area of the overall range (Raposo and Kirwan 2008, p. 80; Raposo *et al.* 2006, p. 51). Both BLI and ITIS recognize the Brasilia tapaculo as *Scytalopus novacapitalis* (BLI 2012; ITIS 2012, Accessed August 10, 2012). For the purpose of this document, we will refer to *S. novacapitalis* as the Brasilia tapaculo.

Species and Habitat Description

The Brasilia tapaculo is a small bird endemic to Brazil. The Brasilia tapaculo occupies the central to southern-central region of the country (Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) 2012; BLI 2012). The Brasilia tapaculo is found in swampy "gallery" forests. These forests surround streams and rivers in regions otherwise devoid of trees, within disturbed areas of thick streamside vegetation and dense secondary growth of *Pteridium aquilinum* (bracken fern). The Brasilia tapaculo is strongly associated with two plant species: *Blechnum* ferns and *Euterpe* palms (del Hoyo *et al.* 2003, in BLI 2010k).

This species, *S. novacapitalis*, is notably different from its congeners in two ways. It is light grey with brown fringed feathers on the rump and flanks

and is morphologically almost identical to *S. speluncae* (Raposo *et al.* 2006, p. 52). Additionally, the song of *S. novacapitalis* consists on average of 1.1 notes per second, which is considerably fewer than either *S. notorius* or *S. speluncae*, whereas the duration of each note lasts an average 0.1 seconds, as opposed to either *S. speluncae* or *S. notorius*, which never exceeded 0.05 seconds in any sample analyzed (Raposo *et al.* 2006, p. 52).

Range

The species has been documented in the state of Goiás and in the state of Minas Gerais, specifically in Serra da Canastra National Park (BLI 2012; Honkala and Niiranen 2010, p. 124; BLI 2008; Scaramuzza et. al. 2005, p. 49; Silveira 1998, p. 55; Negret and Cavalcanti 1985, as cited in Collar *et al.* 1992). The species occupies forested areas within a range of approximately 109,000 km² (42,085 mi²) but is still likely losing habitat (BLI 2010j; Scaramuzza et. al. 2005, p. 49). Its distribution now may be larger than believed when we were initially petitioned to list this species in the 1980s. In Serra do Cipó and Caraça, which are in the hills and plateaus of central Brazil, this species was located at low densities (Collar *et al.* 1992). In and around the Serra da Canastra National Park, this species has in the past been reported to be very common (Honkala and Niiranen 2010, p. 124; Silveira 1998, p. 3). In the Minas Gerais area, the species was located at low densities at Serra Negra (on the upper Dourados River) and the headwaters of the São Francisco river in the early 1990s (Collar *et al.* 1992).

Population

There is no current population estimate other than that the population is decreasing in connection with habitat loss and degradation (BLI 2012).

Factors Affecting the Species

The swampy forests where it is found are not as conducive to forest clearing as other areas, leaving the species' habitat less vulnerable to habitat loss and degradation than previously thought. The majority of locations where this species is found are likely within established protected nature reserves such as Serra da Canastra. Both fire risk and drainage impacts are reduced in these areas (Antas *in litt.* 2007). However, dam building for irrigation on rivers that normally flood gallery forests may still impact this species (Antas *in litt.* 2007; Teixeira *in litt.* 1987, as cited in Collar *et al.* 1992). Its population has likely decreased in connection with habitat loss.

Conservation Status

The IUCN categorizes the Brasilia tapaculo as "Near Threatened" (BLI 2012). It is not listed in any appendices of CITES (CITES 2010). This species was listed in Brazil's Official List of Species of Brazilian Fauna Threatened with Extinction in 1989 under Ordinance No. 1522 of 19 December 1989, Law No. 7.735 of 1989 (IBAMA 1989, p. 6). However, the Brasilia tapaculo is no longer listed on Brazil's List of Species of Brazilian Fauna Threatened with Extinction (IBAMA 2003). In 2005, a team reviewed priority areas for biodiversity conservation in Goiás State, and the Brasilia tapaculo was considered to have a lower level of vulnerability than many other species in the state (Scaramuzza et. al. 2005, pp. 48–49).

Some of the areas where this species occurs are protected. Three Important Bird Areas (IBAs) have been identified as important for this species: Parque Nacional de Brasília, Cerrados ao Sul de Brasília, and the Serra da Canastra National Park. IBAs are a way to identify conservation priorities (BLI 2012). A site is recognized as an IBA when it meets criteria "* * *based on the occurrence of key bird species that are vulnerable to global extinction or whose populations are otherwise irreplaceable." Criteria for sites for conservation are those that are small enough to be conserved in their entirety, but large enough to support self-sustaining populations of the key bird species.

In the previous ANOR, the Brasilia tapaculo received an LPN of 8. After reevaluating the available information, we find that a change in the LPN for the Brasilia tapaculo is warranted. The Brasilia tapaculo does not represent a monotypic genus. The magnitude of threat to the species is moderate to low because at least two of the populations are in protected habitat which ameliorate some factors affecting the species; and its preferred habitat is swampy and difficult to clear. Threats are nonimminent, because it is found in a number of habitats and is reported as being common in some protected areas. Because the species has such a wide range and its distribution is likely larger than believed when we were initially petitioned to list this species in the 1980s, we find that, an LPN of 11 is appropriate for this species, and we will continue to monitor its status.

Codfish Island fernbird (*Bowdleria punctata wilsoni*), LPN = 12

Taxonomy

There are five subspecies of *Bowdleria punctata*, each restricted to a single island in New Zealand and its outlying islets. The North Island subspecies (*M. p. vealeae*) and South Island subspecies (*M. p. punctatus)* are described as widespread and locally common. The Stewart Island (*M. p. stewartianus)* and the Snares (*M. p. caudatus*) subspecies are described as being moderately abundant (Heather and Robertson 1997). IUCN and BLI only recognize the species *Bowdleria punctata;* it is not addressed at subspecies level. Neither the species nor the subspecies is addressed by ITIS (*www.itis.gov*, accessed June 8, 2012). However, the New Zealand Department of Conservation (NZDOC) recognizes the Codfish Island fernbird as a valid subspecies. Because New Zealand recognizes the subspecies, and absent peer-reviewed information to the contrary, we currently consider *Bowdleria punctata wilsoni* to be a valid subspecies within a multispecies genus.

Species Description

There is little information available about this species. The Codfish Island fernbird is found only on Codfish Island, New Zealand. Codfish Island is a nature reserve of 1,396 ha (3,448 ac) located 3 km (1.8 mi) off the northwest coast of Stewart Island (McClelland 2007). McClelland (2007) indicated that, in the past, the Codfish Island fernbird was restricted to low shrubland in the higher areas of Codfish Island. Fernbirds are sedentary and are not strong fliers. They are secretive and reluctant to leave cover and feed in low vegetation or on the ground, eating mainly caterpillars, spiders, grubs, beetles, flies, and moths (Heather and Robertson 1997).

Population

Although there is no current estimate of the size of the Codfish Island fernbird population (estimates are based on incidental encounter rates in the various habitat types on the island), the population as of 2007 was believed to be several hundred. In 1966, the status of the Codfish Island subspecies (*B. punctata wilsoni*) was considered relatively safe (Blackburn 1967), but estimates dating from 1975 indicated a gradually declining population to approximately 100 individuals (Bell 1975 as cited in IUCN 1979). While there are no accurate data on the population size or trends on Putauhinu, as of 2007, the numbers were estimated to be between 200 and 300 birds spread

over the island (McClelland 2007). McClelland believes that the population has likely stabilized (2007).

Factors Affecting the Species

Codfish Island's native vegetation has been modified by the Australian brush-tailed possum (*Trichosurus vulpecula*), which was introduced to the Island. Codfish Island fernbird populations were also reduced due to predation by weka and Polynesian rats (McClelland 2007; McClelland 2002, pp. 1–9; Merton 1974, pers. comm., as cited in IUCN 1979). The Codfish Island fernbird population was reported to have rebounded strongly with the removal of predator species in the 1980s and 1990s (McClelland 2007). Additionally, it successfully recolonized forest habitat, which greatly expanded its range. However, because there is always the chance that rats could reestablish a population on the island; the island is being monitored for rats. To safeguard the Codfish Island fernbird, the NZ DOC established a second population on Putauhinu Island, a small 144-ha (356-ac), privately owned island located approximately 40 km (25 mi) south of Codfish Island. The Putauhinu population established rapidly, and McClelland (2007) reported that it is believed to be stable. Even with a second population on Putauhinu Island, the Codfish Island fernbird still remains vulnerable to naturally occurring storm events due to its restricted range, predation, and small population size.

Conservation Status

The Codfish Island fernbird has varying levels of conservation status. At the species level, IUCN categorizes *Bowdleria punctata* as least concern (BLI 2010k); however, neither the IUCN nor BLI addresses the subspecies individually. The 2008 New Zealand Threat Classification System manual indicates that the two "at risk" categories: "range restricted" and "sparse" have been replaced by a single category called "naturally uncommon" (p. 10). The NZDOC categorizes this subspecies as "naturally uncommon." It is not listed in any appendices of CITES (CITES 2010).

In the previous ANOR, the Codfish Island fernbird received an LPN of 12. After reevaluating the available information, we find that no change in the LPN for this subspecies is warranted. The information available indicates that the subspecies faces threats that are low to moderate in magnitude because: (1) It exists on an island that is a nature reserve, and (2) the removal of predators and the establishment of a second population have allowed for a rebound in the subspecies' population. Although the actual population numbers for this subspecies are unknown (possibly around 500 individuals), threats are nonimminent because the conservation measures have been successful. Therefore, an LPN of 12 remains valid for this subspecies. However, we will continue to monitor the status of this subspecies.

Ghizo white-eye (*Zosterops luteirostris*), LPN = 2

Species and Habitat Description

There is little information available about this species and its habitat (Filardi 2012, pers. comm.). Its range is estimated to be less than 35 km^2 (13.5 mi^2), of which less than 1 km^2 (0.39 mi^2) is old growth forest. The Ghizo white-eye (also known as the splendid white-eye) is described as "warbler-like." Its physical characteristics include silvery-white eye rings with dark olive upper parts and its underparts are bright yellow (BLI 2012). The species has a black beak and orange-yellow legs (BLI 2012). The Ghizo white-eye is endemic to the small island of Ghizo, which is 11 km long and 5 km wide (7 by 3 mi). Ghizo is a densely populated island in the Solomon Islands in the South Pacific Ocean, east of Papua New Guinea (BLI 2010m). As of 2005, the human population on the island was estimated to be approximately 6,670 (*www.adb.org*, accessed September 9, 2010).

Population

A very rough population estimate for this species is between 250 and 1,000 mature individuals (BLI 2012). However, it is based on (1) population density estimates for close relatives with a similar body size, and (2) the fact that only a portion of its estimated extent of occurrence is likely to be occupied (BLI 2012). In the 1990s, this species was characterized as being locally common in the remaining tall or old-growth forest, which is very fragmented and is now believed to be less than 1 km^2 (0.39 mi^2). It is unclear whether the remaining habitat can support sustainable breeding populations (Filardi pers. comm. 2012, Buckingham *et al.* 1995, as cited in BLI 2008). Biologists familiar with this species recommend that systematic surveys be conducted for this species to verify its status in the wild and to evaluate the condition of its habitat and its population. Although there are no data on population trends, the species is very likely declining due to habitat loss and degradation (Filardi pers. comm. 2012, BLI 2012).

Factors Affecting the Species

This species' small population is likely declining due to habitat loss. Areas around Ghizo Town, which previously supported the species, have been further degraded since the town was devastated by a tsunami, and habitat was found less likely able to support the species in 2012 (Filardi *in litt.* 2012). The tsunami in 2007 contributed to the loss of habitat to the point where the area around Ghizo town, which once contained the species, has been deemed unable to support the species (Filardi *in litt.* 2012 in BLI 2012). Extreme weather events are likely to affect this species; however, little information is available.

The species is also affected through conversion of forested areas to agricultural uses (BLI 2008). The very tall old-growth forest on Ghizo is still under pressure from clearance for local use as timber, firewood, and gardens, as are the areas of secondary growth, which are already suboptimal habitats for this species. Its very small population is believed to still be declining; and species with fragmented habitat in combination with small population sizes may be at greater risk of extinction due to synergistic effects (Davies *et al.* 2004, pp. 265–271).

Conservation Status

Few, if any, protections are in place for this species. The IUCN Red List classifies this species as endangered because of its very small population that is considered to be declining due to habitat loss (Filardi 2012, pers. comm., BLI 2012). It is not listed in any appendices of CITES (CITES 2012).

In the previous ANOR, the Ghizo white-eye received an LPN of 2. After reevaluating the available information, we find that no change in the LPN for this species is warranted. The Ghizo white-eye does not represent a monotypic genus. It faces threats that are high in magnitude due to declining suitable habitat and its small, declining population size. The best available information indicates that forest clearing is occurring at a pace that is rapidly denuding the habitat; secondary growth is being converted to agricultural purposes. Further, the human population on the small island is likely contributing to the reduction in old-growth forest for local uses such as gardens and timber. The estimate of the Ghizo white-eye population is believed to be between 250 and 1,000 individuals, and its population trend is believed to be declining. These threats

to the species are ongoing, of high magnitude, and imminent. Thus, based on the best available scientific and commercial information, the LPN remains a 2 for this species.

Black-backed tanager (*Tangara peruviana*), LPN = 8

Species and Habitat Description

This species' physical characteristics include an underbody color of blue-turquoise and a pale red-brown vent or cloaca. The male has a chestnut-colored head and black back. The female is duller and greener. It has a complex distribution with seasonal fluctuations in response to the ripening of *Schinus* fruit, at least in Rio de Janeiro and São Paulo (BLI 2010n). It has been observed visiting gardens and orchards of houses close to forested areas. Its diet consists primarily of fruit and to a smaller extent, insects (Moraes and Krul 1997).

The black-backed tanager is endemic to the coastal Atlantic forest region of southeastern Brazil. The species has been documented in Rio de Janeiro, São Paulo, Parana, Santa Catarina, Rio Grande do Sul, and Espirito Santo (BLI 2010n; Argel-de-Oliveira *in litt.* 2000, as cited in BLI 2008). The species is generally restricted to *Restinga* habitat, which is a Brazilian term that refers to sandy forest habitat consisting of a patchwork of vegetation types, such as beach vegetation; open shrubby vegetation; herbaceous, shrubby coastal sand dune habitat; and both dry and swamp forests distributed over coastal plains (McGinley 2007, pp. 1–2; Rocha *et al.* 2005, p. 263). This habitat type is specific to the local nutrient-poor, sandy, acidic soils of the Atlantic Forest. In addition to being found in undisturbed habitat, the black-backed tanager has also been observed in secondary forests (BLI 2008).

The Atlantic Forest extends up to 600 km (373 mi) west of the Atlantic Ocean. It consists of tropical and subtropical moist forests, tropical dry forests, and mangrove forests at mostly low-to-medium elevations less than 1,000 m (3,281 ft); however, altitude can reach as high as 2,000 m (6,562 ft) above sea level.

Population

Within suitable habitat, the black-backed tanager is generally not considered rare (BLI 2010n). The population estimate is between 2,500 to 10,000 individuals (BLI 2012). This species is more common in São Paulo during the winter, and records from Espirito Santo are only available from the winter season. Additional knowledge of the species' seasonal movements would provide an improved understanding of the species' population status and distribution, but populations currently appear small and fragmented and are believed to be declining, likely in response to extensive habitat loss (BLI 2012).

Factors Affecting the Species

The primary factor affecting this species is the rapid and widespread loss of habitat. As of 2000, between 7 and 10 percent of its habitat remained intact (Morellato and Haddad 2000, p. 786; Oliveira-Filho and Fontes 2000, p. 794). Based on a number of estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; TNC 2007, p. 1; WWF 2007, pp. 2–41; Saatchi *et al.* 2001, p. 868; Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854). In addition to the overall loss and degradation of its habitat, the remaining tracts of its habitat are severely fragmented.

Its remaining suitable habitat in the areas of Rio de Janeiro and São Paulo are affected by ongoing development of coastal areas, primarily for tourism enterprises (e.g., large hotel complexes, beachside housing) and associated infrastructure support (BLI 2012; WWF 2007, pp. 7 and 36–37; del Hoyo 2003, p. 616). These activities have drastically reduced the species' abundance and extent of its occupied range. These activities affect the species' continued existence because populations are being limited to highly fragmented patches of habitat (BLI 2012). This species seems to tolerate some environmental degradation if there are well-preserved stretches in its territory in which the birds can seek shelter; however, we expect habitat loss and degradation will likely increase in the future.

Because this species inhabits coastal areas, sea level rise may also affect this species (Alfredini *et al.* 2008, pp. 377–379). In Santos Bay on the coast, sea level rise scenarios were investigated based on predictions of sea level increases between 0.5 and 1.5 m (1.6 and 4.9 ft) by the year 2100 (Alfredini *et al.* 2008, pp. 378). Even small increases in sea level may cause flooding and erosion and could change salt marsh zones within this species' habitat (Alfredini *et al.* 2008, pp. 377–379). As sea level rises, less habitat will be available for this species. Habitat loss due to sea level rise may be compounded by an increased demand by humans to use land for housing and infrastructure. The black-backed tanager would likely attempt to move inland in search of new suitable habitat as its current habitat disappears. However, there may not be enough suitable habitat remaining for the species. Although Brazil has several laws implementing protection for species such as the black-backed tanager and small portions of this species' range occur in six protected areas, none of the protected areas are supported by effective protection according to BLI (2012). Its habitat is under pressure from the intense development that occurs in coastal areas, particularly south of Rio de Janeiro. These factors affecting the black-backed tanager's remaining habitat are ongoing due to the challenges that Brazil faces to balance its competing development and environmental priorities.

Conservation Status

The species is classified as vulnerable by the IUCN (BLI 2012). The black-backed tanager is not listed in any appendices of CITES (CITES 2010). Portions of the tanager's range are in six protected areas, although protections are not always effective (BLI 2012). This species is protected under the National Environmental Policy Act (Law 6.938 of 1981), implemented by the Brazilian Institute of the Environment and Natural Resources (Instituto Brasileiro do a Meio Ambiente de do Recursos Naturais Renováveis (IBAMA). The basis of environmental law and policy in Brazil is Article 225 of its Constitution (Pereira Neto *et al.* 2011, p. 63).

In the previous ANOR, the black-backed tanager received an LPN of 8. After reevaluating the available information, we find that no change in the LPN for this species is warranted at this time. The black-backed tanager does not represent a monotypic genus. Despite laws in place, its habitat continues to diminish. We find that threats (primarily habitat loss) to the species are moderate in magnitude due to the species' fairly large range, existence in protected areas, and apparent flexibility in diet and habitat suitability. Threats are imminent because the species is at risk due to ongoing and widespread loss of habitat due to beachfront and related development. Therefore, an LPN of 8 remains valid for this species.

Lord Howe Island pied currawong (*Strepera graculina crissalis*), LPN = 6

Taxonomy

The Lord Howe Island pied currawong is a subspecies distinct from the five mainland pied currawongs (*Strepera graculina* spp.). In 2004, it was suggested that its taxonomy be reviewed to determine if it warrants recognition as a distinct species (McAllan *et al.* 2004). ITIS recognizes only *S. graculina* (ITIS 2012, accessed August 21, 2012) rather than the subspecies. The subspecies is not specifically addressed by BLI or IUCN. Because Australia recognizes the subspecies, and absent peer-reviewed information to the contrary, we consider *S. graculina crissalis* to be a valid subspecies within a multispecies genus.

Species Range and Habitat Description

This subspecies is endemic to Lord Howe Island, New South Wales, Australia. Lord Howe Island is 600 km (373 mi) northeast of Sydney, Australia. This is also the distance to the subspecies' closest relative, the mainland pied currawong (*S. graculina*). The Lord Howe pied currawong is limited to an 18-km² (6.95 mi²) area on the 20-km² (7.7-mi²) island (Government of Australia 2012, p. 3). It has been recorded to a limited extent on small nearby islets of the Admiralty group (New South Wales Department of Environment & Climate Change (NSW DECC) 2010; Garnett and Crowley 2000). Lord Howe Island is unique among inhabited Pacific Islands in that less than 15 percent of the island has been cleared (Wilkinson and Priddel 2011, p. 508) and less than 24 percent has been disturbed (NSW Department of Environment and Conservation (DEC) 2007a).

The Lord Howe pied currawong breeds in rainforests and palm forests, particularly along streams. Its territories include sections of streams or gullies that are lined by tall timber (Garnett and Crowley 2000). The highest densities of Lord Howe pied currawong nests have been located on the slopes of Mount Gower and in the Erskine Valley, with smaller numbers on the lower land to the north (Knight 1987, as cited in Garnett and Crowley 2000). The nests are typically situated high in trees and are made in a cup shape with sticks and lined with grass and palm thatch (NSW DECC 2005). As of 2001, most of Lord Howe Island was still forested.

The Lord Howe pied currawong is omnivorous and eats a wide variety of food, including native fruits and seeds (Hutton 1991, Auld *et al.* 2009). It is the only remaining native island vertebrate predator (NSW DECC 2010). It has been recorded eating seabird chicks, poultry, and chicks of the Lord Howe woodhen (*Tricholimnas sylvestris*) and white tern (*Gygis alba*). It also feeds on both live and dead rats (Hutton 1991). Food brought to Lord Howe pied currawong nestlings by its parents was observed to be, in decreasing order of frequency: invertebrates, fruits, reptiles, and nestlings of other bird species (Lord Howe Island Board (LHIB) 2006).

Population

In the 2000 Action Plan for Australian Birds (Garnett and Crowley 2000), the Lord Howe pied currawong population was estimated to be approximately 80 mature individuals. In 2007, the Foundation for National Parks & Wildlife (FNPW 2007) estimated that the breeding population of the Lord Howe pied currawong was between 80 and 100 pairs, with a nesting territory in the tall forest areas of about 5 ha (12 ac) per pair (Carlile 2007, pers. comm. in Government of Australia 2012, p. 3). The most recent population estimate was between 100 and 200 individuals (from surveys in 2005–2006) (NSW DECC 2010, p. 3). It was recently described as being widespread on the island and occurring in urban areas (Government of Australia 2012, p. 3); however, a precise estimate of the population is unavailable.

Factors Affecting the Species

The small population size makes this species highly vulnerable to factors that can be detrimental to its survival. Its population size is limited by the amount of available habitat and the lack of food during the winter (FNPW 2007). Two potential threats have been identified: the introduction of exotic predators and the persecution of the Pied Currawong (Lord Howe Island) by humans in retaliation to attacks on domestic and endemic birds (Garnett & Crowley 2000; Hutton 1991). On Lord Howe Island, ten bird species have become extinct due to hunting, introduced predators, and competitors (Government of Australia 2012b, p. 633). The Lord Howe pied currawong remains unpopular with some residents, likely because of its predatory nature on nestlings. The incidence of shooting has declined since the 1970s, when conservation efforts on Lord Howe Island began (Hutton 1991), but occasional shootings occurred as of 2007 (Carlile 2007, pers. comm.). It is unclear what effect this localized killing has on the overall population size and distribution of the species (Garnett and Crowley 2000).

The Lord Howe Island Pied Currawong has persisted in reasonable numbers despite the introduction of the black rat (*Rattus rattus*) in 1918 (Fullagar & Disney 1975; McAllan *et al.* 2004). However, it may benefit from previous rat eradication programs and a rat eradication program that is currently underway (The Daily Telegraph, July 20, 2012; Carlile 2007, pers. comm.). The removal of feral animals has resulted in the recovery of some forest understory (WWF 2001).

Other factors affecting the species include nontarget poisoning, and effects associated with extremely small population sizes (NSW DECC 2010). Because the Lord Howe pied currawong often preys on rats, it may be subject to nontarget poisoning during rat-baiting programs (Wilkinson and Priddel 2011, p. 509; DEC 2007b). The Pied Currawong may actually have benefited from the introduction of some exotic plants and animals that are now used as a food source (Garnett & Crowley 2000; McFarland 1994; Mills undated; Cooper 1990; Hutton 1991).

Habitat loss and degradation continue to occur. All the forest areas adjacent to clearings continue to suffer from progressive dieback (Sinclair 2002, p. 6). Sinclair notes that the Permanent Park Preserve and Transit Hill are degrading at the edges where rainforest trees (which need to be buffered) are exposed to strong winds. Close monitoring of the population is needed because this small, endemic population is highly susceptible to the factors identified above as well as catastrophic events such as disease or introduction of a new predator (Government of Australia 2012b, p. 633).

Conservation Status

Various levels of conservation and protections exist for this subspecies. At the species level, it is considered least concern by the IUCN; the subspecies is not addressed (BLI 2010o). It is not listed in any appendices of CITES. The NSW Threatened Species Conservation Act of 1995 lists the Lord Howe pied currawong as vulnerable due to its extremely limited range (it only occurs on Lord Howe Island) and its small population size (NSW DECC 2010). The pied currawong is also listed as vulnerable under the Australian Commonwealth Environment Protection and Biodiversity Conservation Act of 1999. These laws provide a legislative framework to protect and encourage the recovery of vulnerable species (NSW DEC 2006a). The Lord Howe Island Act of 1953, as amended, (1) established the Lord Howe Island Board (LHIB), (2) made provisions for the LHIB to care,

control, and manage the island; and (3) established 75 percent of the land area as a permanent park preserve (NSW DEC 2007). Additionally, the Lord Howe Island Biodiversity Management Plan was finalized in 2007, and is the formal Recovery Plan for threatened species and communities of the Lord Howe Island Group (DEC 2007a, Government of Australia 2005, p. 574).

In the previous ANOR, the Lord Howe pied currawong received an LPN of 6. After reevaluating the threats to the Lord Howe pied currawong, we have determined that no change in the LPN representing the magnitude and imminence of threats to the subspecies is warranted. The Lord Howe pied currawong does not represent a monotypic genus. It faces threats that are high in magnitude due to a combination of factors including its extremely small population size, nontarget poisoning, and habitat clearing and modification. Despite conservation efforts, the population of the Lord Howe pied currawong has remained around 100 to 200 individuals. Species with small, declining population sizes such as these may be at greater risk of extinction due to synergistic effects of factors affecting this species (Davies *et al.* 2004, pp. 265–271). However, because conservation efforts for the species have been implemented, and the species is being closely managed and monitored, we find that the threats are nonimminent. Thus, based on the best available information, the LPN remains at 6 to reflect nonimminent threats of high magnitude.

Invertebrates

Harris' mimic swallowtail (*Mimoides (syn. Eurytides) lysithous harrisianus*), LPN = 6

Species and Habitat Description

Harris' mimic swallowtail butterfly is a subspecies endemic to Brazil (Collins and Morris 1985). Although the species' range historically included Paraguay, the subspecies has not recently been confirmed in Paraguay (Finnish University and Research Network 2004; Collins and Morris 1985). Occupying the lowland swamps and sandy flats above the tidal margins of the coastal Atlantic Forest, the subspecies prefers alternating patches of strong sun and deep shade (Brown 1996; Collins and Morris 1985). This subspecies is polyphagous, meaning that its larvae feed on more than one plant species (Kotiaho *et al.* 2005). Information on its preferred host plants and adult nectar-sources was published in the status review (also known as a 12-month finding) on December 7, 2004 (69 FR 70580). The Harris' mimic swallowtail butterfly mimics at least three butterfly species in the *Parides* genus, including the Fluminense swallowtail (described below). This mimicry system makes it difficult to distinguish this subspecies from the species that it mimics (Brown *in litt.* 2004; Monteiro *et al.* 2004).

Population

The Barra de São João colony is the best-studied. Between 1984 and 2004, the population maintained a stable size, varying between 50 to 250 individuals (Brown *in litt.* 2004; Brown 1996; Collins and Morris 1985), and was reported to be viable, vigorous, and stable in 2004 (Brown *in litt.* 2004). There are no estimates of the size of the colony in Poço das Antas Biological Reserve where it had not been seen for 30 years prior to its rediscovery there in 1997 (Brown *in litt.* 2004). Population estimates are lacking for the colony at Macaé, where the subspecies was netted in Jurubatiba National Park in the year 2000, after having not been seen in the area for 16 years (Monteiro *et al.* 2004).

Range

In Rio de Janeiro, Harris' mimic swallowtail has been confirmed in three locations. Two colonies were identified on the east coast of Rio de Janeiro, at Barra de São João and Macaé, and the other in Poço das Antas Biological Reserve, farther inland. The range of Harris' mimic swallowtail overlaps two protected areas: Poço das Antas Biological Reserve and Jurubatiba National Park, and therefore it is somewhat protected from habitat loss. Both Barra de São João and the Poço das Antas Biological Reserve are within the São João River Basin. The Barra de São João River Basin encompasses a 216,605-ha (535,240-ac) area, of which 150,700 ha (372,286 ac) is managed as a protected area. The Harris' mimic swallowtail was previously known in Espirito Santo; however, there are no recent confirmations of its occurrence there (New and Collins 1991; Collins and Morris 1985).

Factors Affecting the Species

Habitat destruction has been the main threat to this subspecies (Brown 1996; Collins and Morris 1985), especially urbanization in Barra de São João, industrialization in Macaé (Jurubatiba National Park), and previous fires that occurred in the Poço das Antas Biological Reserve. As described in detail for the Fluminense swallowtail (below), Atlantic Forest habitat has been reduced to 5 to 10 percent of its original cover. More than 70 percent of the Brazilian population lives in the Atlantic Forest region, and coastal development is ongoing throughout the Atlantic Forest region (TNC 2009; Butler 2007; Conservation International 2007; CEPF 2007a; Höfling 2007; Peixoto and Silva 2007; Pivello 2007; WWF 2007; Hughes *et al.* 2006).

Habitat destruction caused by fires in the Poço das Antas Biological Reserve appears to have abated. The Reserve was established to protect the golden lion tamarin (*Leontopithecus rosalia*) (Decree No. 73,791, 1974), but the Harris' mimic swallowtail, which occupies the same range, likely benefits as a result of efforts to conserve golden-lion-tamarin habitat (Teixeira 2007; WWF 2003; De Roy 2002). The revised management plan indicates that the Reserve is to be used for research and conservation with limited public access (CEPF 2007a; IBAMA 2005). The Jurubatiba National Park is located in a region that is undergoing continuing development pressures from urbanization and industrialization (Savarese 2008; Khalip 2007; Brown 1996; IFC 2002; CEPF 2007b; Otero and Brown 1984), and there is no management plan in place for the Park (CEPF 2007b). However, as discussed for the Fluminense swallowtail, the Park, as of 2007, was considered to be in a very good state of conservation (Rocha *et al.* 2007).

As of 2004, conditions at Barra de São João appeared to be suitable for long-term survival of this subspecies. The Harris' mimic swallowtail's preferred environment of both open and shady areas continues to be present in the region, with approximately 541 forest patches averaging 127 ha (314 ac) in size, covering nearly 68,873 ha (170,188 ac), and a minimum distance between forest patches of 276 meters (m) (0.17 mi) (Teixeira 2007). In studies between 1984 and 1991, Brown (1996) determined that Harris' mimic swallowtails in Barra de São João flew a maximum distance of 1,000 m (0.62 mi). It follows that the average flying distance would be less than this figure. Thus, the average 276-m (0.17-mi) distance between forest patches in the Barra de São João River Basin is clearly within the flying distance of this subspecies. Because the colony at Barra de São João has maintained a stable population for 20 years, it may be that the conditions available there remain suitable.

Another factor affecting butterfly species is collection. Trade in wildlife parts and products is extremely lucrative, and, as wildlife becomes rarer, it becomes worth more in value (TRAFFIC 2010, pp. 52, 122, 179). Although there are laws to prohibit

illegal wildlife trade, in some countries, laws are rarely enforced due to inadequate resources; and only a fraction of smuggled wildlife is intercepted (TRAFFIC 2012, p. 4; TRAFFIC 2010, p. 7). For example, in 1998, in the United States 100 Golden Birdwing (*Troides aeacus,* CITES Appendix II) butterflies were seized; no permit had been issued for the specimens, which had been falsely labeled before being exported from Thailand (TRAFFIC 2010, p. 28). In 2001, two Russian insect collectors were arrested in India and were found to have approximately 2,000 butterflies in their possession (p. 52). In 2007, a Japanese individual was convicted for illegal sale of $38,831 U.S. dollars (USD) worth of protected butterfly species. This individual is apparently known as the world's top smuggler of protected butterflies. One of the smuggled butterfly species was Homerus Swallowtail (*Papilio homerus,* CITES Appendix I). During this investigation, 43 butterflies were sold to undercover agents, including 2 Alexandra's birdwings (*Ornithoptera alexandrae,* CITES Appendix I), 2 Luzon Peacock swallowtails (*Papilio chikae,* CITES Appendix I), and 6 Corsican swallowtails (*Papilio hospiton,* CITES Appendix I) (p. 122). In 2009, in Japan an individual was sentenced to 1 year and 6 months' imprisonment and fined 1 million yen ($10,750 USD) due to illegally importing and selling rare butterfly species. He was found to have illegally imported 145 butterflies from France. Among the specimens were three Queen Alexandra's Birdwings (*Ornithoptera alexandrae,* CITES Appendix I) and one Apollo Butterfly (*Parnassius apollo,* CITES Appendix II) (p. 179).

The only known populations are within close proximity to a major, expanding city in Brazil—Rio de Janiero, the second largest city in Brazil. As this species becomes rarer, it becomes even more desirable to collectors (TRAFFIC 2010, pp. 52, 122, 179). Although the species exists in a protected area, collectors will take risks to obtain these rare and desirable species. Although we do not know the full extent of illegal trade, according to the 2010 TRAFFIC report, this may represent only a small fraction of the illegal collection of butterfly species that occurs.

Conservation Status

IBAMA considers this subspecies to be critically imperiled (Portaria No. 1,522 1989; Ministerio de Meio Ambiente 2003). As of 1996, collection and trade of the subspecies was prohibited (Brown 1996). In 1998, Brazil enacted the Lei de Crimes Ambientais ou Lei da Natureza—Law no 9.605/98, which addresses environmental crimes and sets forth penal and administrative penalties resulting from activities that are harmful to the environment (IBAMA 2011). This law addresses the integrity of biodiversity and other natural resources and assesses civil, administrative, and criminal penalties to private individuals, corporations, and businesses. Harris' mimic swallowtail was categorized on the IUCN Red List as endangered in the 1988, 1990, and 1994 IUCN Red Lists (IUCN 1996). However, it currently is not included in the current IUCN Redlist (IUCN 2010; Xerces Society 2010a). This species is not listed on any appendices of CITES.

In the previous ANOR, the Harris' mimic swallowtail received an LPN of 6. After reevaluating the threats to this species, we have determined that no change in the listing prioritization number is warranted. Harris' mimic swallowtail is a subspecies and is not within a monotypic genus. Although the best-studied colony has maintained a stable and viable size for nearly two decades, there is limited suitable habitat remaining for this subspecies. Habitat destruction remains a threat. These threats are high in magnitude due to its small endemic population, collection, and potential catastrophic events such as severe tropical storms or introduction of a new disease or predator. Because the population is very small and limited to only two small areas, we find the threats are of high magnitude. However, we do not find that these threats are imminent because the subspecies is protected by Brazilian law, and the colonies are located within protected areas. Based on the best available information, the LPN of 6 will remain to reflect nonimminent threats of high magnitude for this species.

Jamaican Kite Swallowtail (*Protographium marcellinus,* syn. *Eurytides*), LPN = 2

Species Description and Range

The Jamaican kite swallowtail butterfly is endemic to Jamaica, preferring wooded, undisturbed habitat containing its only known larval host plant: black lancewood or West Indian lancewood (*Oxandra lanceolata*). The food preferences of adults have not been reported (Bailey 1994; Collins and Morris 1985). Since the 1990s, adult Jamaican kite swallowtails have been observed in the parishes of St. Thomas and St. Andrew in the east; westward in St. Ann, Trelawny, and St. Elizabeth; and in the extreme western coast, in the Parish of Westmoreland (Garraway in litt 2011; Harris 2002; Möhn 2002; WRC 2001; Bailey 1994; Smith *et al.* 1994). There is only one known breeding site in the eastern coast town of Rozelle, St. Thomas Parish, although it is possible that other sites exist given the widely dispersed nature of the larval food plant (Garraway in litt 2011; Robbins *in litt.* 2004; Garraway *et al.* 1993; Bailey 1994; Smith *et al.* 1994; Collins and Morris 1985).

Population

The Jamaican kite swallowtail maintains a low population level; there is no known estimate of its population size (Garraway 2011 in litt). It occasionally becomes locally abundant in Kingston and Rozelle during the breeding season in early summer and again in early fall (Garraway in litt 2011; Bailey 1994; Smith *et al.* 1994; Garraway *et al.* 1993; Collins and Morris 1985; Brown and Heineman 1972), and experiences episodic population explosions (72 FR 20184; 69 FR 70580). The population in St. Thomas has generally been regarded as the core population (Garraway in litt 2011).

Factors Affecting the Species

Habitat loss and degradation had been considered to be the primary factors affecting the Jamaican kite swallowtail; however, now the primary factors affecting the species are believed to be its small population size and that it is endemic only to Jamaica (Garraway in litt 2011). After centuries of a high rate of deforestation, the island lost much of its original forest (Gartner *et al.*, 2008, pp. 8, 11; Berglund and Johansson 2004, pp. 2, 5; Evelyn and Camirand 2003, p. 354; Koenig 2001, p. 206; Koenig 1999, p. 9). Eight percent of the total land area of Jamaica is covered with forest classified as minimally disturbed closed broadleaf (Evelyn and Camirand 2003 in Strong *in litt.* 2011). Some of the species' most important habitat is protected from human activities due to the inaccessibility of the habitat, but even these areas have been encroached upon and degraded. However, in some areas, its habitat is regenerating (Garraway *in litt.* 2011).

Monophagous butterflies (meaning that their larvae feed only on a single plant species) such as the Jamaican kite swallowtail tend to be more affected by habitat degradation than polyphagous species; due largely to their specific habitat and ecological requirements (Kotiaho *et al.* 2005). Harvest and clearing has reduced the availability of this species' only known larval food plant. In Rozelle, extensive habitat modification for agricultural and

industrial purposes such as mining has diminished this species' habitat (WWF 2001; Gimenez-Dixon 1996). When habitat is altered through open-pit mining, it is irreversibly modified and, therefore, it is impossible to restore the previous ecosystem. These sites can be rehabilitated; however, a typical reclaimed and rehabilitated site often fails to regenerate with woody vegetation (Strong *in litt.* 2011). As of 2004, black lancewood was being impacted by clearing for cultivation and by felling for the commercial timber industry (Windsor Plywood 2004; Collins and Morris 1985). However, more recent information indicates that its food source is more readily available than previously believed (Garraway in litt 2011).

Jamaica is subject to high-impact stochastic events such as hurricanes. Hurricane-related weather damage in the last two decades along the coastal zone of Rozelle has resulted in the erosion and virtual disappearance of the once-extensive recreational beach (Economic Commission for Latin America and the Caribbean (ECLAC), United Nations Development Programme (UNDP), and the Planning Institute of Jamaica (PIOJ) (2004)). Hurricane Ivan, a category 5 hurricane, caused severe local damage to Rozelle Beach in 2004, including road collapse caused by the erosion of the cliff face and shoreline. The estimated restoration cost from Hurricane Ivan damage was $23 million USD ($1.6 million Jamaican dollars (J$) (ECLAC *et al.* 2004), indicating the severity of the damage inflicted by these hurricanes. While we do not consider stochastic events to be a primary factor affecting this species, we believe that the damage caused by hurricanes is contributing to habitat loss.

The Jamaican kite swallowtail has been collected for commercial trade in the past (Melisch 2000; Schütz 2000; Collins and Morris 1985). The Jamaican Wildlife Protection Act of 1998 carries a maximum penalty of U.S. $1,439 (J $100,000) or 12 months of imprisonment for violating its provisions. This deterrent appears to be effectively protecting this species from illegal trade (National Environment and Planning Agency 2005). As of 2008, we were unaware of any recent seizures under the Lacey Act or smuggling of this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia in litt.). With the legal prohibition described below in effect, however, the current impact of collection is likely negligible (Garraway in litt 2011).

Conservation Status

Various levels of conservation exist for the species. In addition to being protected under Jamaica's Wildlife Protection Act of 1998, it is also included in Jamaica's National Strategy and Action Plan on Biological Diversity. This strategy established specific goals and priorities for the conservation of Jamaica's biological resources (Schedules of The Wildlife Protection Act 1998). The Forest Act of 1996 and the Forest Regulations Act of 2001 increased the power of Jamaican authorities to protect the species' habitat (Gartner *et al.* 2008, pp. 9–10). These included mandates to determine the biodiversity in the forest as well as the ability to acquire private lands as forest reserves. Since 1985, the Jamaican kite swallowtail has been categorized on the IUCN Red List as "Vulnerable" (IUCN 2012). This species is not listed in any of the appendices of CITES (CITES 2012).

In the previous ANOR, the Jamaican kite swallowtail received an LPN of 2. After reevaluating the factors affecting the Jamaican kite swallowtail, we have determined that no change in the listing priority number is warranted. The Jamaican kite swallowtail does not represent a monotypic genus. The current factors affecting the species are high in magnitude particularly since there is only one known larval host plant. There is only one known breeding site and the species' larval food plant has a restricted distribution. In addition, stochastic events such as hurricanes and tropical storms are unpredictable but are likely to occur. Although Jamaica has taken regulatory steps to preserve native swallowtail habitat, the threats affecting this species are imminent; it has a very small population size, and habitat destruction based on hurricanes and tropical storms is very likely to occur. Based on a reevaluation of the threats to this species, the LPN remains a 2 to reflect imminent threats of high magnitude.

Fluminense Swallowtail (*Parides ascanius*), LPN = 5

Species and Habitat Description

The Fluminense swallowtail is a white and rose swallowtail butterfly endemic to Brazil's restinga habitat within the Atlantic Forest region in the tropical and subtropical moist broadleaf forests of southeastern coastal Brazil (Uehara-Prado and Fonesca 2007, p. 265; Thomas 2003). Its habitat is characterized by medium-sized trees and shrubs that are adapted to coastal conditions (Kelecom et al 2002, p. 171). During the caterpillar stage of its lifecycle, it feeds on *Aristolochia macroura* (Dutchman's pipe) and is believed to be monophagous (Otero and Brown 1984).

Range

One study predicted the species potentially occurs in an area of 1,675,457 ha (4,140,127 ac) within the State of Rio de Janeiro (Uehara-Prado and Fonseca 2007, p. 265). While the presence of suitable habitat should not be used to infer the presence of a species, it can facilitate more focused efforts to identify and confirm additional locations and the conservation status of the Fluminense swallowtail (Uehara-Prado and Fonseca 2007, p. 266). The only known occurrences of the Fluminense swallowtail correlated with existing protected areas within Rio de Janeiro, including the Poço das Antas Biological Reserve (Uehara-Prado and Fonseca 2007). This Reserve, established in 1974, encompasses 13,096 ac (5,300 ha) of inland Atlantic Forest habitat (CEPF 2007a; Decree No. 73,791, 1974). The Poço das Antas Biological Reserve and the Jurubatiba National Park are the only two protected areas considered large enough to support viable populations of the Fluminense swallowtail (Brown *in litt.* 2004; Robbins *in litt.* 2004; Otero and Brown 1984).

In Rio de Janeiro, the species has been documented in five locations including: Barra de São João and Macaé (in the Restinga de Jurubatiba National Park) along the coast; and farther inland at the Poço das Antas Biological Reserve (Brown *in litt.* 2004). Other verified occurrences were in the Área de Tombamento do Mangue do Rio Paraíba do Sul and in Parque Natural Municipal do Bosque da Barra (Instituto Iguacu 2008; Uehara-Prado and Fonseca 2007).

Population

This swallowtail species is sparsely distributed throughout its range, reflecting the patchy distribution of its preferred habitat (Uehara-Prado and Fonseca 2007; Tyler *et al.* 1994; Otero and Brown 1984). The species is described as being seasonally common, with sightings of up to 50 individuals seen in one morning in the Barra de São João area. It was historically seen in Rio de Janeiro, Espirito Santo, and São Paulo (Gelhaus *et al.* 2004). However, there are no recent confirmations of this species in either Espirito Santo or São Paulo.

A population estimate reported in 1984 in Barra de São João was between 20 and 100 individuals (Otero and Brown 1984). The colony within the

Poço das Antas Biological Reserve was rediscovered in 1997, after a nearly 30-year absence from this location (Brown *in litt.* 2004). Researchers noted only that "large numbers" of swallowtails were observed (Brown *in litt.* 2004; Robbins *in litt.* 2004). There are no population estimates for other colonies. However, individuals from the population considered to be the most viable in Barra de São João migrate widely in some years, and this is likely to enhance gene flow among colonies (Brown *in litt.* 2004).

Factors Affecting the Species

Habitat destruction has been the main factor affecting this species (Brown 1996; Gimenez Dixon 1996; Collins and Morris 1985). Monophagous butterflies tend to be more susceptible to habitat degradation than polyphagous species (Kotiaho *et al.* 2005, p. 1,966), and the restinga habitat preferred by Fluminense swallowtails is a highly specialized environment that is restricted in distribution (Ueraha-Prado and Fonseca 2007, p. 264; Brown *in litt.* 2004; Otero and Brown 1986). Fluminense swallowtails require large areas to maintain viable populations (Uehara-Prado *et al.* 2007, pp. 43–53; Brown *in litt.* 2004; Otero and Brown 1986). The Atlantic Forest habitat, which once covered 1.4 million km² (540,543 mi²), has been reduced to between 5 and 10 percent of its original cover. It also contains more than 70 percent of the Brazilian human population (TNC 2009; Butler 2007; Conservation International 2007; CEPF 2007a; Höfling 2007; WWF 2007). The restinga habitat upon which this species depends was reduced by 17 km² (6.56 mi²) each year between 1984 and 2001, equivalent to a loss of 40 percent of restinga vegetation over the 17-year period (Temer 2006, unpaginated). In addition, of the forest that remains, 83 percent exists in small fragments of less than 50 ha (123 acres). The major ongoing human activities that have resulted in habitat loss, degradation, and fragmentation include: conversion to agriculture, plantations, livestock pastures, human settlements, hydropower reservoirs, commercial logging, subsistence activities, and coastal development (Butler 2007; Pivello 2007; TNC 2007; Peixoto and Silva 2007; WWF 2007; Hughes *et al.* 2006).

Collection and commercial exploitation was identified as a factor affecting the Fluminense swallowtail (Collins and Morris 1985; Melisch 2000; Schütz 2000). The species is easy to capture. Species with restricted distributions or localized populations, such as the Fluminense swallowtail, tend to be more vulnerable to overcollection than those with a wider distribution (Brown *in litt.* 2004; Robbins *in litt.* 2004).

Parasitism has been indicated to be another factor affecting the Fluminense swallowtail. Recently, Tavares *et al.* (2006) discovered four species of parasitic chalcid wasps (*Brachymeria* and *Conura* species; Hymenoptera family) associated with Fluminense swallowtails. Parasitoids are species whose immature stages develop on or within an insect host of another species, ultimately killing the host (Weeden *et al.* 1976). This is the first report of parasitoid association with Fluminense swallowtails (Tavares *et al.* 2006, p. 1,197). To date, there is no information regarding the magnitude of effect these parasites are having on the Fluminense swallowtail.

Although the Fluminense swallowtail and the Harris' mimic swallowtail face similar threats, there are several dissimilarities that influence the magnitude of these threats. Fluminense swallowtails are monophagous (Kotiaho *et al.* 2005; Otero and Brown 1984). In contrast, Harris' mimic swallowtail is polyphagous (Brown 1996; Collins and Morse 1985); its larvae feed on more than one plant species (Kotiaho *et al.* 2005). In addition, although their ranges overlap, Harris' mimic swallowtails tolerate a wider range of habitat than the highly specialized restinga habitat preferred by the Fluminense swallowtail. Also unlike the Harris' mimic swallowtail, Fluminense swallowtails require a large area to maintain a viable population (Brown *in litt.* 2004; Monteiro *et al.* 2004); in part because they are known to feed on only one food source.

According to the 2005 management plan (IBAMA 2005), the Poço das Antas Biological Reserve is used solely for protection, research, and environmental education. Public access is restricted, and there is an emphasis on habitat conservation, including protection of the Río São João. This river runs through the Reserve and is integral to maintaining the restinga conditions preferred by the Fluminense swallowtail. The Reserve was plagued by fires in the late 1980s through the early 2000s, but fire is not currently believed to be a factor affecting the species. Between 2001 and 2006, there was an increase in the number of private protected areas near or adjacent to the Poço das Antas Biological Reserve and Barra de São João (Critical Ecosystem Partnership Fund (CEPF) 2007a). Corridors have been planned or created to connect existing protected areas and 13 privately protected forests by planting and restoring habitat previously cleared for agriculture or by fires, which should assist the habitat connectivity for this species (De Roy 2002, unpaginated).

The Jurubatiba National Park (14,860 ha; 36,720 mi²), located in Macaé and established in 1998 (Decree of April 29 1998), is one of the largest contiguous areas containing restinga habitat under protection in Brazil (CEPF 2007b; Rocha *et al.* 2007). The Macaé River Basin forms the outer edge of the Jurubatiba National Park and contains the habitat preferred by the Fluminense swallowtail ((International Finance Corporation (IFC) 2002; Brown 1996; Otero and Brown 1984). Rocha *et al.* (2007) described the habitat as being in a very good state of conservation, but lacking a formal management plan. Threats to the Macaé region include industrialization for oil reserve and power development (IFC 2002) and intense population pressures (including migration and infrastructural development) (Brown 1996; CEPF 2007b; IFC 2002; Khalip 2007; Otero and Brown 1984; Savarese 2008). The researchers concluded that the existing protected area system may be inadequate for the conservation of this species.

Conservation Status

Brazil categorizes the Fluminense swallowtail to be "Imperiled" (Portaria No. 1,522 1989; MMA 2003). Commerce in this species is strictly prohibited (Brown *in litt.* 2004). According to the 2012 IUCN Red List, the Fluminense swallowtail has been classified as "Vulnerable" since 1983, based on its distribution and habitat fragmentation and loss that has occurred within its predicted range. This species has not been formally considered for listing in the appendices to CITES (*www.cites.org*). However, the European Commission listed Fluminense swallowtail on Annex B of Regulation 338/97 in 1997 (Grimm *in litt.* 2008), and the species continues to be listed on this Annex (Eur-Lex 2008, verified August 20, 2012). There has been no legal trade of this species into the European Union since its listing on Annex B (Grimm *in litt.* 2008), nor are we aware of any recent reports of seizures under the Lacey Act or smuggling in this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia *in litt.* 2008).

In the previous ANOR, the Fluminense swallowtail received an LPN of 5. After reevaluating the factors affecting the Fluminense swallowtail,

we have determined that no change in the listing priority number is warranted. The Fluminense swallowtail does not represent a monotypic genus. The species is currently affected by habitat destruction; however, we have no information to suggest that overutilization and parasitism are currently occurring such that they are threats to the Fluminense swallowtail. Habitat destruction is of high magnitude because the species: (1) Occupies highly specialized habitat; (2) requires large areas to maintain a viable colony; and (3) is only found within two protected areas considered to be large enough to support viable colonies. However, additional populations have been reported, increasing previously known population numbers and distribution. The threat of habitat destruction is nonimminent because most habitat modification is the result of historical destruction that has resulted in fragmentation of the current landscape; however, the potential for continued habitat modification exists, and we will continue to monitor the situation. Based on the conservation measures in place, we believe that overutilization is not currently a threat to the Fluminense swallowtail. On the basis of this information, the Fluminense swallowtail retains a priority rank of 5.

Hahnel's Amazonian Swallowtail (*Parides hahneli*), LPN = 2

Species and Habitat

Hahnel's Amazonian swallowtail is endemic to Brazil and is found only on sandy beaches where the habitat is overgrown with dense scrub vegetation (Tyler *et al.* 1994; New and Collins 1991; Collins and Morris 1985). Hahnel's Amazonian swallowtail is likely monophagous. This swallowtail depends upon highly specialized habitat—beaches of river drainage areas. Wells *et al.* (1983) describe the habitat as ancient sandy beaches covered by scrubby or dense vegetation that is not floristically diverse. The larval host-plant is believed to be a species in the Dutchman's pipe genus, either *Aristolochia lanceolato-lorato* or *A. acutifolia* (Tyler *et al.* 1994; Collins and Morris 1985).

Hahnel's Amazonian swallowtail is known from three locations along the tributaries of the middle and lower Amazon River basin in the states of Amazonas and Pará (Brown 1996; Tyler *et al.* 1994; New and Collins 1991; Collins and Morris 1985). Hahnel's Amazonian swallowtail is highly localized, reflecting the distribution of its highly specialized preferred habitat (Brown *in litt.* 2004).

Population

The population size of Hahnel's Amazonian swallowtail is not known, nor do we have information on any population trend for this species. Within its range, Hahnel's Amazonian swallowtail populations are described as being small (Brown *in litt.* 2004).

Factors Affecting the Species

Habitat alteration (e.g., for dam construction and waterway crop transport) and destruction (e.g., clearing for agriculture and cattle grazing) are ongoing in Pará and Amazonas where this species is found (Hurwitz 2007; Fearnside 2006). Researchers believe that, because Hahnel's Amazonian swallowtail has extremely limited habitat preferences, any sort of river modification such as impoundment, channelization, or levee construction would have an immediate and highly negative impact on the species (New and Collins 1991; Wells *et al.* 1983).

Competition for host plants has been identified as a potential factor affecting Hahnel's Amazonian swallowtail. Researchers in the past believed that this species might suffer from host plant competition with other butterfly species in the region (Brown 1996; Collins and Morris 1985; Wells 1983). It occupies the same range with another swallowtail butterfly, *Parides chabrias ygdrasilla*, and mimics at least two other genera that occupy the same area, *Methona* and *Thyrides* (Brown 1996). However, this competition has not been confirmed, and, at this time, there is insufficient information to conclude that this is a factor affecting this species.

This species of swallowtail has been collected for commercial trade (*http://www.johnnyvalencia.com/?tag=parides-hahneli*; Melisch 2000; Schütz 2000; Collins and Morris 1985). Species with restricted distributions or localized populations, such as the Hahnel's Amazonian swallowtail, are more vulnerable to collection than those with a wider distribution (Brown *in litt.* 2004; Robbins *in litt.* 2004). Although not strictly protected from collection throughout Brazil, the state of Pará recently declared the capture of Hahnel's Amazonian swallowtail for purposes other than research to be forbidden (Decreto No. 802, 2008). As of 2008, seizures under the Lacey Act of Hahnel's Amazonian swallowtail into or out of the United States had not been reported (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia *in litt.* 2008). The best available information does not indicate that collection is impacting the species.

Conservation Status

Hahnel's Amazonian swallowtail continues to be listed as "Data Deficient" by the IUCN Red List (IUCN 2012). Hahnel's Amazonian swallowtail is listed as endangered on the state of Pará's list of threatened species (Resolução 054 2007; Decreto No. 802 2008; Secco and Santos 2008). Hahnel's Amazonian swallowtail is not listed in any Appendices of CITES (CITES 2012). Hahnel's Amazonian swallowtail is listed on Annex B of Regulation 338/97 (Eur-Lex 2008), and there has been no legal trade in this species into the European Union since its listing on Annex B in 1997 (Grimm *in litt.* 2008).

In our previous ANOR, the Hahnel's Amazonian swallowtail received an LPN of 2. After reevaluating the threats to the Hahnel's Amazonian swallowtail, we have determined that no change in the LPN is warranted. This swallowtail does not represent a monotypic genus. It faces threats that are high in magnitude and imminence due to its small endemic population, and limited and decreasing availability of its highly specialized habitat (beaches of river drainage area) and food sources. Dam construction, waterway crop transport, clearing for agriculture and cattle grazing are ongoing in Pará and Amazonas. These threats are imminent due to the species' highly localized and specialized habitat requirements. Secondary concerns are possible illegal collection and competition with other species. Based on a reevaluation of the threats, the LPN remains a 2 to reflect imminent threats of high magnitude.

Kaiser-I-Hind Swallowtail (*Teinopalpus imperialis*), LPN = 8

Species Description and Range

The Kaiser-I-Hind swallowtail is native to the Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, and Vietnam (TRAFFIC 2007; Baral *et al.* 2005; Food and Agriculture Organization (FAO) 2001; Igarashi 2001; Masui and Uehara 2000; Forest Resources Assessment Program of Bhutan 1999; Osada *et al.* 1999; Tordoff *et al.* 1999; Trai and Richardson 1999; Shrestha 1997). This species prefers undisturbed (primary), heterogeneous, broad-leaved-evergreen forests or montane deciduous forests, and is found at altitudes between 1,500 and 3,050 m (4,921 to 10,000 ft) (Igarashi 2001; Tordoff *et al.* 1999; Collins and Morris 1985). This species is polyphagous. It has been reported that the adult Kaiser-I-Hind swallowtails do not feed, but this remains unclear (Collins and Morris 1985). Larval host-

plants may differ across the species' range, but they include:

Magnolia campbellii in China (Sung and Yan 2005; Yen and Yang 2001; Igarashi and Fukuda 2000);

Magnolia spp. in Vietnam (Funet 2004);

Daphne spp. in India, Nepal, and Myanmar (Funet 2004); and

Daphne nipalensis also in India (Robinson *et al.* 2004).

Populations

Despite the species' widespread distribution, local populations are described as not being abundant (Collins and Morris 1985). The known locations within each range country are as follows:

Bhutan: The species was reported to be extant (still in existence) in Bhutan (FRAP 1999; Gimenez Dixon 1996), although specific details on locations or population information are not readily available.

China: The species has been reported in Fuji, Guangxi, Hubei, Jiangsu, Sichuan, and Yunnan Provinces (Sung and Yan 2005; Igarashi and Fukuda 2000; UNEP-WCMC 1999; Gimenez Dixon 1996; Collins and Morris 1985).

India: Assam, Manipur, Meghalaya, Sikkim, and West Bengal (Bahuguna 1998; Collins and Morris 1985; Gimenez Dixon 1996; Ministry of Environment and Forests 2005). There is no recent status information on this species (Bombay Natural History Society *in litt.* 2007) with the exception of the region of Assam where the species had not been sighted in several years (Barua *et al.* 2010, p. 8).

Laos: The species has been reported in Laos (Osada *et al.* 1999), but no further information is available (Vonxaiya *in litt.* 2007).

Myanmar: The species has been reported in Shan, Kayah (Karen) and Thaninanthayi (Tenasserim) states (Collins and Morris 1985; Gimenez Dixon 1996).

Nepal: The species has been reported in Nepal in the Central Administrative Region at two localities: Phulchoki Mountain Forest and Shivapuri National Park (Baral *et al.* 2005; Nepali Times 2002; Shrestha 1997, Gimenez Dixon 1996; Collins and Morris 1985).

Thailand: The species has been reported in the northern province of Chang Mai (Pornpitagpan 1999). The species has limited distribution in the higher elevation mountains (greater than 1,500 m (4,921 ft)) of northern Thailand and is found within three national parks according to the CITES Scientific Authority of Thailand (2007).

Vietnam: The species has been confirmed in three Nature Reserves (Tordoff *et al.* 1999; Trai and Richardson 1999).

Factors Affecting the Species

Habitat destruction is believed to negatively impact this species, which prefers undisturbed high-altitude habitat (Igarashi 2001; Tordoff *et al.* 1999; Collins and Morris 1985). In China and India, the Kaiser-I-Hind swallowtail populations are at risk from habitat modification and destruction due to commercial and illegal logging (Barua *et al.* 2010; Maheshwari 2003; Yen and Yang 2001). In Nepal, the species is at risk from habitat disturbance and destruction resulting from mining, wood collection for use as fuel, agriculture, and grazing animals (Baral *et al.* 2005; Shrestha 1997; Collins and Morris 1985). In Nepal, the Forest Ministry considered habitat destruction to be a critical threat to all biodiversity, including the Kaiser-I-Hind swallowtail, in the development of its biodiversity strategy (HMGN 2002). In Thailand, habitat degradation and loss caused by deforestation and land conversion for agricultural purposes is considered to be a primary factor affecting this species (FAO 2001; Hongthong 1998).

The Kaiser-I-Hind swallowtail is highly valued and has been collected for commercial trade, despite range country regulations prohibiting or restricting such activities, in part because it is very difficult to enforce protections for species such as butterflies that are easy to collect and smuggle (TRAFFIC 2007; Schütz 2000; Collins and Morris 1985). Between 1990 and 1997, illegally collected specimens were selling for 500 Rupees (12 USD) per female and 30 Rupees in India (0.73 USD) per male (Bahuguna 1998), and illegal species purportedly derived from Sichuan were being advertised for sale on the internet for 60 U.S. Dollars (US$), despite restrictions in China.

In a recent survey conducted by TRAFFIC Southeast Asia (2007), of 2,000 residents in Ha Noi, Vietnam, the Kaiser-I-Hind swallowtail was among 37 Schedule IIB-species that were actively being collected (p. 36). The majority of the survey respondents were unaware of legislation prohibiting collection of Schedule IIB-species (p. 7). This is a highly desirable species, and there is a culture within Vietnam of consuming rare and expensive wild animal dishes, particularly in Ha Noi among the elite (TRAFFIC 2007, p. 9). This practice does not seem to be decreasing; rather it appears to be increasing. Although Vietnam has implemented several action plans to strengthen control of trade in wild fauna and flora (TRAFFIC 2007, p. 9), within-country protections are likely inadequate to protect this species from illegal collection throughout its range.

According to the Thai Scientific Authority, there are no captive breeding programs for this species; however, the species is offered for sale by the Lepidoptera Breeders Association (2009). It was marketed as derived from a captive breeding program in Thailand, although in 2009, specimens were noted as being "out of stock" (Lepidoptera Breeders Association 2009).

Between 1991 and 2012, CITES records indicate that 163 specimens were traded internationally under valid CITES permits (UNEP–WCMC CITES trade database 2012). Reports that the Kaiser-I-Hind swallowtail is being captive-bred in Taiwan (Yen and Yang 2001) remain unconfirmed. Since 1993, there have been no reported seizures under the Lacey Act or smuggling of this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia *in litt.* 2008). Therefore, on the basis of global trade data, although illegal trade remains a concern, we do not consider legal international trade to be a significant factor affecting this species.

Conservation Status

Since 1996, the Kaiser-I-Hind swallowtail has been categorized on the IUCN Red List as "Lower Risk/near threatened" (IUCN 2012; Gimenez Dixon 1996). The Kaiser-I-Hind swallowtail has been listed in CITES Appendix II since 1987 (CITES 2012).

In China, the species is protected by the Animals and Plants (Protection of Endangered Species) Ordinance (1989), which restricts import, export, and possession of the species. On China's 2005 Species Red List, it was described as "Vulnerable" (China Red List 2006).

In India, the Kaiser-I-Hind swallowtail is listed on Schedule II of the Indian Wildlife Protection Act of 1972, which prohibits hunting without a license (Indian Wildlife Protection Act 2006; Collins and Morris 1985).

In Nepal, the Kaiser-I-Hind swallowtail is protected by the National Parks and Wildlife Conservation Act of 1973 (His Majesty's Government of Nepal (HMGN) 2002). However, the Forestry Ministry of Nepal determined in 2002 that the high commercial value of its "Endangered" species on the local and international market may result in local extinctions of species such as the Kaiser-I-Hind (HMGN 2002).

In Thailand, the Kaiser-I-Hind swallowtail and 13 other invertebrates are listed under Thailand's Wild Animal Reservation and Protection Act

(WARPA) of 1992 (B.E. 2535 1992), which makes it illegal to collect wildlife (whether alive or dead) or to have the species in one's possession (Choldumrongkul *in litt.* 2007; FAO 2001; Pornpitagpan 1999; Hongthong 1998). In addition to prohibiting possession, WARPA prohibits hunting, breeding, and trading. Import and export are allowed only for conservation purposes (Jaisielthum *in litt.* 2007).

In Vietnam, the species is listed as "Vulnerable" in the 2007 Vietnam Red Data Book, due to declining population sizes and area of occupancy (Canh *in litt.* 2007). In Vietnam, this species of swallowtail is reported to be among the most valuable of all butterflies (World Bank 2005). In 2006, the species was listed on Vietnam's Schedule IIB of Decree No. 32 on "Management of endangered, precious, and rare forest plants and animals." A Schedule IIB-listing restricts the exploitation or commercial use of species with small populations or that are considered by the country to be in danger of extinction (Canh *in litt.* 2007). The species is provided some protection from habitat destruction in Vietnam, where it has been confirmed in three nature reserves that have low levels of disturbance (Tordoff *et al.* 1999; Trai and Richardson 1999).

After reevaluating the threats to this species, we have determined that no change in its LPN is warranted. The Kaiser-I-Hind swallowtail does not represent a monotypic genus. The current factors, habitat destruction and illegal collection, are moderate in magnitude due to the species' wide distribution and to various protections in place within each country. We find that the threats are imminent due to ongoing habitat destruction and high market value for specimens. Based on our reassessment of the threats, we have retained an LPN of 8 to reflect imminent threats of moderate magnitude.

Molluscs

Colorado Delta Clam (*Mulinia coloradoensis*), LPN = 2

Taxonomy

The Colorado Delta clam is a member of the family *Mactridae* (Phylum *Mollusca*). This species is restricted to the Gulf of California and west Mexican area (Keen 1971, p. 207). The treatment of *Mulinia coloradoensis* as a distinct species is widely accepted among experts of molluscan studies (Arizona-Sonora Desert Museum 2011, p. 1; Smithsonian Institution 2011, p. 1; Gemmell *et al.* 1987, p. 45; Bernard 1983, p. 40). The taxonomy of *M. coloradoensis* has been validated as a unique species through morphometric analysis (Flessa and Tellez-Duarte 2001, p. 5). Accordingly, we conclude that *M. coloradoensis* is a valid species.

Species Description

The Colorado Delta clam was described by Dall (1894, p. 6) as having a "larger" shell, solid, rude (relatively undeveloped or primitive), equilateral, resembling *M. modesta*, but having a more arched posterior dorsal margin, the base behind the posterior dorsal angle. It was also described as being somewhat concavely flexuous, with slightly elevated ridges that radiate. The length of a medium-sized specimen is 49 millimeters (mm) (0.2 in), and its height 36.5 mm (0.14 in), and the width is 32 mm (0.13 in). Rodriguez *et al.* (2001a, p. 253) report the species can reach lengths of almost 60 mm (0.24 in).

Little is known about the life history of the Colorado Delta clam. The species is known to take 3 years to grow to an average adult size of 30 mm (0.12 in) (Kowalewski *et al.* 2000, p. 1060; Kowalewski *et al.* 1994, p. 231), and it likely does not live much longer. The lifespan of this species is likely about 3 years, which is average for this genus. Other species of *Mulinia* are known to live up to 2 years (Lu *et al.* 1996, p. 3482). The family *Mactridae* is commonly found in sandy or muddy substrates associated with brackish water (Leal 2002, p. 59–61). This species is an infaunal (aquatic animal that lives in the substrate of a body of water, usually in a soft sea bottom), suspension-feeding estuarine bivalve (Rodriguez *et al.* 2001a, p. 252). The species is found in low intertidal mud at depths of about 7 cm (2.75 in) beneath sediment (Rodriguez *et al.* 2001a, p. 253).

No specific information has been collected regarding the reproductive biology of the Colorado Delta clam, although Rodriguez *et al.* (2001a, p. 255) speculate the species may spawn in response to episodes of fresh water inflow. Reproduction in bivalves is mostly through external fecundation (sperm and egg cells unite external to the bodies of reproducing individuals) (Leal 2002, p. 26). A species within the same genus, *M. lateralis*, is known to spawn from May to November (Puglisi and Thiebaud 2008, p. 2; Lu *et al.* 1996, p. 3,482). A female *M. lateralis* will release between 0.5 to 2 million eggs during a spawning event (Lu *et al.* 1996, p. 3482), indicating the Colorado Delta clam could potentially exhibit high fecundity in the proper conditions.

Historical Range

The Colorado Delta clam was once an abundant species in the head of the Gulf of California in the estuary of the Colorado River (Martinez 2012; Dall 1894, p. 6). This species is present in cheniers (piles of dead shells) as far as 75 km (47 mi) from the mouth of the Colorado River Delta (Rodriguez *et al.* 2001b, pp. 185–186). This finding indicates the species historically had a broad distribution (Martinez 2012; Alles 2006, p. 2; Arias *et al.* 2004, p. 11; Zamora-Arroyo *et al.* 2005, p. 2; Cohen *et al.* 2001, p. 35; Luecke *et al.* 1999, p. 1).

Current Range

This species is now known to exist as a relict population at Isla Montague, Mexico, at the mouth of the Colorado River Delta (Martinez 2012; Cintra-Buenrostro *et al.* 2005, p. 296; Flessa and Tellez-Duarte 2001, p. 9; Rodriguez *et al.* 2001a, p. 251; Flessa and Rodriguez 1999, p. 8). Although Keen (1971, p. 207) indicated the species also occurs in "west Mexican area," there are no reliable records of the species from that area and the available evidence indicates the species' distribution is restricted to the Delta (Flessa and Tellez-Duarte 2001, p. 9; Flessa and Rodriguez 1999, p. 5).

The relative abundance of Colorado Delta clam is associated with salinity, which is common with *Mulinia* clams (Flessa and Rodriguez 1999, p. 8). Abundance of dead shells of Colorado Delta clam decreases with increasing distance from the mouth of the Colorado River, suggesting the species distribution is influenced by freshwater inflow (Rodriguez *et al.* 2001b, p. 188).

Population Estimate

We are unaware of precise estimates of the population size for Colorado Delta clam. However, the species is believed to now comprise less than one percent of the living fauna in the Delta (Avila-Serrano *et al.* 2006, p. 656; Flessa and Tellez-Duarte 2001, p. 2; Rodriguez *et al.* 2001b, p. 186; Kowalewski *et al.* 2000, p. 1060; Kowalewski *et al.* 1994, p. 219). Prior to 1998, the species was described as the most abundant mollusk that lived in the Colorado River Delta area (Rodriguez *et al.* 1998, p. 1). The best available information suggests that the species has experienced a 90 percent reduction from historical population size caused by the decrease in freshwater flow to the estuary (Martinez 2012; Avila-Seranno *et al.* 2006, pp. 650, 658; Cintra-Buenrostro 2005, p. 300).

Factors Affecting the Species

Virtually the entire flow of the Colorado River has been captured and consumed by municipal, industrial, and agricultural users before entering Mexico (Alles 2006, p. 2, 6; Cohen 2005, p. 2; Morrison *et al.* 1996, p. xii; Rodriguez *et al.* 2001b, p. 183). The Delta is now believed to support only about 60,000 ha (150,000 ac) of wetland habitats and riparian communities, having been reduced by over 90 percent over the past 80 years (Cohen 2005, p. 2; Arias *et al.* 2004, p. 11; Cohen *et al.* 2001, p. 35; Glenn *et al.* 1996, p. 1175). The reduction in the extent of the estuary ecosystem in the Colorado Delta mirrors the decline of the Colorado Delta clam (Martinez 2012). Through examination of dead shells, which accumulate in cheniers, the Colorado Delta clam once dominated the bivalve community of the Delta with a massive population extending 75 km (47 mi) into the Gulf of California (Rodriguez *et al.* 2001a, p. 254; Kowalewski *et al.* 2000, pp. 1059–1060).

The relict population at Isla Montague continues to survive, apparently on scarce and intermittent freshwater inflow (Martinez 2012). The ecological conditions within the Delta, upon which the Colorado Delta clam depends, have undergone significant changes due to the reduction of freshwater inflow. Rodriguez *et al.* (2001a, p. 257) demonstrated that the decrease of freshwater, nutrients, and sediments from Colorado River inflow is largely responsible for the decline in the abundance and distribution of the Colorado Delta clam. Zamora-Arroyo *et al.* (2005, p. 3) determined that lack of dedicated freshwater input is the principle threat to the Delta and Upper Gulf of California.

Since completion of upstream dams, primarily Glen Canyon Dam in 1963, very little fresh water reaches the Gulf of California in most years (Avila-Serrano *et al.* 2006, p. 649; Baron *et al.* 2002, p. 1251; Postel *et al.* 1998, p. 120; Glenn *et al.* 1992, p. 818). Construction of upstream dams and diversions since the 1930s has transformed the upper Gulf of California to an inverse estuary with salinity increasing toward the mouth of the river (Rodriguez *et al.* 2001b, p. 183; Lavin *et al.* 1998, p. 769). Salinity at the mouth of the Colorado River has increased from 22–33 practical salinity units (psu) before the construction of the Hoover Dam in 1923 to 38 psu today (Cintra-Buenrostro *et al.* 2011). There are long periods when no fresh water reaches the Gulf, which creates highly saline conditions and increasing water temperatures (Varady *et al.* 2001, p. 205), and the estuary of the Delta is becoming increasingly saline due to lack of freshwater inflow (Alles 2006, p. 2). Dams also trap most sediment before it reaches the Gulf (Alles 2006, p. 8). These conditions are not conducive to the survival of this clam species.

Intermittent and unplanned flood releases from upstream dams between 1980 and 2000 resulted in water flowing to the Delta in 10 of those 20 years (Varady *et al.* 2001, p. 203), causing reestablishment of riparian habitat (Rowell *et al.* 2006, pp. 47–48; Luecke *et al.* 1999, p. 7). These releases are likely critical to the maintenance of the aquatic community in the estuary and the continued survival of the species at Isla Montague.

In addition to intermittent flood releases from major dams along the Colorado River, the Delta appears to also be sustained by groundwater seepage and agricultural return water (Rowell *et al.* 2006, p. 48; Arias *et al.* 2004, p. 12). The only water that now reaches the Delta on a regular basis is agricultural return flows, largely from the Mexicali Valley via the Rio Hardy (Alles 2006, p. 2; Cohen 2005, p. 1; Cohen *et al.* 2001, p. 44). There is usually no surface connection from the Cienega de Santa Clara, a large wetland in the upper Delta (Glenn *et al.* 1992, p. 822). Agricultural return flow from the Mexicali Valley, coupled with aquifer inflow, is a freshwater source that ensures the continued survival of the clam.

The contribution of agricultural return flow is due to the recent lining of the All-American Canal, which was completed in 2009. Prior to lining, the All-American Canal was a source of recharge to the Mexicali Valley aquifer (Calleros 1991, p. 837). Sixty percent of the annual recharge to the subterranean aquifer of the Mexicali Valley is due to subterranean flows (Calleros 1991, p. 829), largely from the All-American Canal. Further reductions in freshwater inflow to the Delta may occur in the near future (Martinez 2012).

Drought

At a regional scale, there is broad consensus among climate models that the southwestern United States and northern Mexico will become drier in the twenty-first century, and that the trend is already under way (Martinez 2012; Seager *et al.* 2007, pp. 1181–1184) with increasing aridity in the Southwest occurring as early as 2021–2040. Wetlands in the southwestern United States and northern Mexico are predicted to be particularly at risk of drying (Seager *et al.* 2007, pp. 1183–1184), which has severe implications for aquatic ecosystems.

Numerous models also predict a decrease in annual precipitation in the southwestern United States and northern Mexico (Solomon *et al.* 2009, p. 1707; Christensen *et al.* 2007, p. 888). Solomon *et al.* 2009 predicts precipitation in the southwestern United States and northern Mexico will decrease by as much as 9 to 12 percent. Christensen *et al.* (2007, p. 888) contend the projection of smaller warming over the Pacific Ocean than over the continent is likely to induce a decrease in annual precipitation in the southwestern United States and northern Mexico. This decrease would modify freshwater and sediments vital to the survival of the Colorado Delta clam.

Warmer water temperatures across temperate regions are also predicted to expand the distribution of existing aquatic nonnative species, which could affect this species (Martinez 2012; Mohseni *et al.* 2003, p. 389). There could be 31 percent more suitable habitat for aquatic nonnative species, which are often tropical in origin and better adapted to warmer water temperatures. This change in temperatures could result in an expansion in the range of nonnative aquatic species to the detriment of native species like the Colorado Delta clam.

The Colorado Delta clam is currently threatened by the ongoing and continuing reduction in freshwater input into the Gulf of California, and the inadequacy of regulatory mechanisms to ensure freshwater input (Martinez 2012). Freshwater is critical to the species' survival because the species' life history is tied to the inflow of freshwater to ensure the maintenance of its brackish water habitat. The Delta continues to experience a reduction in freshwater inflow, which is critical to the survival of the species because it depends on the availability of brackish water. Furthermore, the available information indicates that loss of freshwater will likely worsen in the near and long-term future.

Conservation Status

This species exists in Mexico's Biosphere Reserve of the upper gulf of California and the Colorado River Delta, which consists of 930,777 hectares (2.3 million acres). Monitoring of this species is being conducted in connection with the Colorado River Delta-Sonoran Joint Venture between Mexico and the United States (Zamora *et al.* 2007, 2002). A workshop was held in 2002 to determine conservation

priorities in the Colorado River Delta (Zamora-Arroyo *et al.* 2005, p. 3). As of 2002, NGOs in Mexico were working with the Government of Mexico's Ministry of Environment and Natural Resources (Secretaría de Medio Ambiente y Recursos Naturales, or SEMARNAT) to develop ways to protect Mexico's Colorado River riparian corridor (Zamora-Arroyo et al. 2005, p. 4). SEMARNAT's purpose is to promote the protection, restoration, and conservation of ecosystems and natural resources. In 2007, SEMARNAT published a report on the goals and priorities of the Conservation and Management Program for the Reserve (SEMARNAT 2007, 323 pp.). It is not listed on any of the appendices of CITES.

After reviewing the factors affecting this species, we found that the species has experienced an approximate 90 percent reduction from historical population size caused by the decrease in freshwater flow to the estuary. The available evidence indicates that Colorado delta clam is now restricted to one relict population at Isla Montague at the mouth of the Colorado River delta. Since habitat containing the entire range of the species may be rendered unsuitable within the future, we find that threats are of high magnitude. Accordingly, we find the Colorado delta clam is subject to high-magnitude imminent threats, and we assign a LPN of 2 for this species.

Preclusion and Expeditious Progress

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions—(1) the amount of resources available for completing the listing function; (2) the estimated cost of completing the proposed listing, and (3) the Service's workload and prioritization of the proposed listing in relation to other actions.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Service's Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. The Branch of Foreign Species (BFS) was established in June 2010 to specifically work on petitions and other actions under Section 4 of the Act for foreign species.

Section 4(b) of the Act states that the Service may make warranted-but-precluded findings only if it can demonstrate that (1) An immediate proposed rule is precluded by other pending proposals and that (2) expeditious progress is being made on other listing actions. Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted-but-precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted-but-precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Effective in FY 2012, the Service's Listing Program budget has included a foreign species subcap to ensure that some funds are available for other work in the Listing Program. Prior to FY 2012, there was no distinction between listing domestic and foreign species. To reasonably balance the foreign species listing commitment with other listing program responsibility, Congress further refined the appropriations of the Service to add "and, of which not to exceed $1,500,000 shall be used for implementing subsections (a), (b), (c), and (e) of section 4 of the Endangered Species Act, as amended, for species that are not indigenous to the United States * * *" (See Conference Report 112–331, 112th Congress, 1st session, December 15, 2011).

Thus, through the listing program cap and the foreign species subcap, Congress has determined the amount of money available for foreign species listing activities, including petition findings and listing determinations. Therefore, the funds in the foreign species subcap set the limits on our determinations of preclusion and expeditious progress.

In FY 2012, expeditious progress is that amount of work that can be achieved with $1,500,000, which is the amount of money that Congress appropriated for the foreign species subcap within the Listing Program budget (Conference Report 112–331). Funding in the amount of $1,500,000 is being used for work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In addition, available staff resources are also a factor in determining which high-priority species are provided with funding.

Our expeditious progress also includes work on petition findings and listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section

of the table are being conducted under a deadline set by a court. Actions in the bottom section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act.

BFS may, based on available staff resources, work on species described within this ANOR with an LPN of 2 or 3, and when appropriate, species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Because the actions below are either the subject of a court-approved settlement agreement or subject to an absolute statutory deadline and, thus, are higher priority than work on proposed listing determinations for the 20 species described above, publication of proposed rules for these 20 species is precluded.

TABLE 3—ESA FOREIGN SPECIES LISTING ACTIONS FUNDED IN PREVIOUS FISCAL YEARS AND FY 2013 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
All have been completed (See Table 4 below for these specific actions)	
Actions with Statutory Deadlines	
11 tarantula species	90-day petition finding.
15 bat species	90-day petition finding.
Caribou, Peary and Dolphin and Union	12-month petition finding.
Chimpanzee	12-month petition finding.
Caiman, broad-snouted	Final downlisting determination.
Ridgway's Hawk eagle	90-day petition finding.
Virgin Islands coqui	90-day petition finding.
Flores hawk-eagle	90-day petition finding.
Emperor penguin	90-day petition finding.
10 sturgeon species	90-day petition finding.

Despite the priorities that preclude publishing proposed listing rules for these 20 species described in this notice, we are making expeditious progress in adding to and removing species from the Federal lists of threatened and endangered species. Our expeditious progress for foreign species since publication of our previous Annual Notice of Review, published on May 3, 2011 (76 FR 25150), to April 25, 2013, includes preparing and publishing the following:

TABLE 4—ESA FOREIGN SPECIES LISTING ACTIONS PUBLISHED SINCE THE PREVIOUS ANOR WAS PUBLISHED ON MAY 3, 2011

Publication date	Species	Action	FR pages
05/26/2011	Salmon-crested cockatoo	Final rule; threatened with special rule	76 FR 30758–30780
06/02/2011	Straight-horned markhor	90-day finding; initiation of status review.	76 FR 31903–31906
08/09/2011	Crimson shining parrot	Status review; not warranted	76 FR 49202–49236
08/09/2011	Philippine cockatoo	Proposed rule; endangered	76 FR 49202–49236
08/09/2011	Yellow-crested cockatoo	Proposed rule; endangered	76 FR 49202–49236
08/09/2011	White cockatoo	Proposed rule; threatened with special rule.	76 FR 49202–49236
08/11/2011	Six Eurasian birds	Final rule; endangered throughout their range.	76 FR 50052–50080
09/01/2011	Chimpanzee	Petition finding; initiation of status review.	76 FR 54423–54425
10/11/2011	Yellow-billed parrot	Proposed rule; threatened with special rule.	76 FR 62740–62754
10/12/2011	Two South American parrot species	Status review; not warranted	76 FR 63480–63508
01/05/2012	Broad-snouted caiman	Proposed rule; downlisting	77 FR 666–697
05/03/2012	Wood bison	Final rule; downlisting	77 FR 26191–26212
05/23/2012	Morelet's crocodile	Final rule; delisting	77 FR 30820–30854
07/06/2012	Military and great green macaw	Proposed rule; endangered	77 FR 40172–40219
07/06/2012	Hyacinth macaw	Proposed rule; endangered	77 FR 39965–39983
07/06/2012	Scarlet macaw	Proposed rule; endangered	77 FR 40222–40247
07/24/2012	Six Peruvian and Bolivian bird species	Final rule; endangered	77 FR 43433–43467
08/07/2012	Markhor, straight-horned	Proposed rule; downlisting with special rule.	77 FR 47011–47027
09/19/2012	Scimitar-horned oryx, dama gazelle, and addax	90-day petition finding	77 FR 58084–58086
11/27/2012	Lion, African	90-day petition finding	77 FR 70727–70733
01/02/2013	Hummingbird, Honduran emerald	Proposed listing determination	78 FR 59–72
01/10/2013	Macaw, blue-throated	Proposed listing determination	78 FR 2239–2249

As explained above, a determination that listing is warranted-but-precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2012 in the foreign species branch of the Listing Program.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Our expeditious progress also includes work on pending listing actions described above in our "precluded finding," but for which decisions had not been completed at the time of this publication.

Monitoring

Section 4(b)(3)(C)(iii) of the Act requires us to "implement a system to monitor effectively the status of all species" for which we have made a warranted-but-precluded 12-month finding, and to "make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species." For foreign species, the Service's ability to gather information to monitor species is limited. The Service welcomes all information relevant to the status of these species, because we have no ability to gather data in foreign countries directly and cannot compel another country to provide information. Thus, this ANOR plays a critical role in our monitoring efforts for foreign species.

With each ANOR, we request information on the status of the species included in the notice. Information and comments on the annual findings can be submitted at any time. We review all new information received through this process as well as any other new information we obtain using a variety of methods. We collect information directly from range countries by correspondence, from peer-reviewed scientific literature, unpublished literature, scientific meeting proceedings, and CITES documents (including species proposals and reports from scientific committees). We also obtain information through the permit application processes under CITES, the Act, and the Wild Bird Conservation Act (16 U.S.C. 4901 et seq.). We also consult with the IUCN species specialist groups and staff members of the U.S. CITES Scientific and Management Authorities, and the Division of International Conservation; and we attend scientific meetings, when possible, to obtain current status information for relevant species. As previously stated, if we identify any species for which emergency listing is appropriate, we will make prompt use of the emergency listing authority under section 4(b)(7) of the Act.

References Cited

A list of the references used to develop this notice is available at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2012–0044.

Authors

This Notice of Review was primarily authored by Amy Brisendine and staff of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

Authority

This Notice of Review is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 8, 2013.

Rowan W. Gould,

Director, Fish and Wildlife Service.

[FR Doc. 2013–09504 Filed 4–24–13; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 78 Thursday,
No. 80 April 25, 2013

Part VI

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 340
Restructuring of Regulations on the Importation of Plants for Planting; Proposed Rules

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 340

[Docket No. APHIS–2008–0011]

RIN 0579–AD75

Restructuring of Regulations on the Importation of Plants for Planting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to restructure our regulations governing the importation of plants for planting. In the proposed structure, restrictions on the importation of specific types of plants for planting would no longer be found in the regulations, but instead would be found in the Plants for Planting Manual. We would change those restrictions after taking public comment through notices published in the **Federal Register**. As part of this restructuring, we would group together restrictions in the plants for planting regulations that apply to the importation of most or all plants for planting, and we would add general requirements for the development of integrated pest risk management measures that we would use to mitigate the risk associated with the importation of a specific type of plants for planting. We would also amend our foreign quarantine regulations to remove various provisions regarding the importation of specific types of plants for planting that are not currently subject to the general plants for planting regulations; these provisions would also be found in the Plants for Planting Manual. This action would not make any major changes to the restrictions that currently apply to the importation of plants for planting. These changes would make restrictions on the importation of specific types of plants for planting easier for readers to find and less cumbersome for us to change.

DATES: We will consider all comments that we receive on or before June 24, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2008–0011–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2008–0011, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0011* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Coady, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2076.

SUPPLEMENTARY INFORMATION:

Background

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this responsibility to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

The regulations in 7 CFR part 319 prohibit or restrict the importation of plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control to eradicate or contain them within the United States.

The regulations in "Subpart—Plants for Planting," §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict the importation of plants for planting. *Plants for planting* is defined in § 319.37–1 as plants intended to remain planted, to be planted or replanted. *Plant* is defined in that section as any plant (including any plant part) capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Current Regulations

The current regulations can be briefly summarized as follows: Plants for planting that cannot be feasibly inspected, treated, or handled to prevent quarantine pests that may accompany them from being introduced into the United States are listed in § 319.37–2(a) or (b) of the regulations as prohibited articles. Plants for planting whose importation poses a risk of introducing a quarantine pest into the United States, and which need to be further analyzed to determine appropriate mitigations for that risk, are listed as not authorized pending pest risk analysis (NAPPRA) in accordance with the process in § 319.37–2a of the regulations. Prohibited articles and NAPPRA articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under safeguards specified in the permit issued for the importation of the articles.

Other plants for planting are referred to in the regulations as restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that may include permit and phytosanitary certificate requirements, inspection, treatment, postentry quarantine, special inspection and certification requirements, or combinations of these safeguards.

Some restrictions apply to the importation of most or all plants for planting. Under § 319.37–3(a)(5), lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada may be imported into the United States only after issuance of a written permit. This means that most plants for planting are imported with a permit.

All plants for planting imported into the United States must be presented for inspection. Plants for planting that are required to be imported under a written permit under § 319.37–3(a)(1) through (a)(6) and that are not from Canada must be imported or offered for importation at a USDA plant inspection station.[1] Such stations are listed in § 319.37–14. Plants for planting that are offered for inspection at a USDA plant inspection station are inspected by Plant Protection and Quarantine (PPQ) inspectors. Plants for planting that are not required to be inspected at a USDA plant inspection station may be presented for inspection either at one of the ports listed in § 319.37–14 or at a Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Such plants are inspected by the Department of Homeland Security's Bureau of Customs and Border Protection.

After inspection, the plants may be allowed entry into the United States (with treatment, if necessary), destroyed, or reexported, depending on

[1] Small lots of seed imported in accordance with § 319.37–4(d) are exempt from this requirement.

the results of the inspection. As noted earlier, most shipments of plants for planting are required to be imported under a written permit under § 319.37–3(a)(5) and are thus inspected at USDA plant inspection stations.

In addition, except for bulbs from the Netherlands, Canadian greenhouse-grown plants, small lots of seed, and certain seeds from Canada (as described in § 319.37–4(a)(4), (c), (d), and (e), respectively), the regulations require that a phytosanitary certificate issued by the exporting country's national plant protection organization (NPPO) accompany all restricted articles imported into the United States.

Some types of plants for planting may only be imported in accordance with requirements specific to those plants. These requirements are found in §§ 319.37–5 through 319.37–7 of the regulations. Section 319.37–8 prohibits the importation of plants for planting in growing media, except for specified growing media. In addition, § 319.37–8 provides for the importation of certain combinations of growing media and taxa if the plants for planting are produced and inspected according to specific requirements in that section.

In addition to setting out the requirements for the importation of plants for planting in the regulations, APHIS also makes them available in the Plants for Planting Manual, which is commonly used as a reference by importers and port inspectors, among others. The Plants for Planting Manual is available on the Web at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 133, Riverdale, MD 20737–1236. Local PPQ offices also typically have copies available for review.

Summary of Proposed Changes

In this document, we are proposing to restructure the plants for planting regulations to make them simpler and easier to read and to allow for more timely changes to the restrictions on the importation of specific types of plants for planting. To accomplish these goals, we would make the following changes:

- We would remove provisions from other subparts in 7 CFR part 319 that regulate the importation of plants for planting and thus consolidate the requirements for importation of all plants for planting under the plants for planting regulations.
- We would add most of the plants for planting that are listed as prohibited in § 319.37–2(a) to the list of plants for planting whose importation is NAPPRA in accordance with current § 319.37–2a. Other prohibitions would be reflected in the Plants for Planting Manual. This document is currently used by importers and inspectors as a reference regarding restrictions on the importation of plants for planting.
- Within the plants for planting regulations, we would group together the requirements that apply to the importation of all or most plants for planting.
- We are proposing that restrictions on the importation of specific types of plants for planting would no longer be found in the regulations, but instead would be found in the Plants for Planting Manual. We are proposing to change these restrictions after taking public comment on notices published in the **Federal Register**, rather than publishing proposed rules and final rules as we currently do. Specifically, we would publish a notice announcing our determination that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting and make available a document describing those restrictions and why they are necessary. We would allow for public comment on the notice and the document it makes available. We would then respond to any comments we receive in a second notice, and implement the restrictions if our determination remains unchanged. (This process is described in more detail later in this document.)
- We would remove several lists of approved items (for example, the lists of approved growing media, packing materials, and ports of entry) from the regulations and instead provide these lists to the public in the Plants for Planting Manual. We would update these lists, when necessary, using a process similar to the one we are proposing to use to update restrictions on the importation of specific types of plants for planting.
- We are proposing to establish a framework for the use of integrated pest management measures in the production of specific types of plants for planting for importation into the United States, when the pest risk associated with the importation of a type of plants for planting can only be addressed through the use of integrated measures.
- We are also proposing several minor changes to the regulations to improve their clarity and reflect current program operations.

We are not proposing to make major changes to the restrictions that currently apply to the importation of plants for planting. This proposal is directed towards making the regulations easier to use and to implement. Our proposed changes are discussed in detail below.

Removal of Restrictions on the Importation of Specific Types of Plants for Planting in Other Subparts

In addition to the plants for planting regulations, part 319 contains several subparts that regulate the importation of all plants and plant parts of a specific type, both plants for planting and plants for consumption, decoration, or other uses. Specifically, plants for planting and plants for other uses are regulated in subparts pertaining to the importation of cotton; sugarcane; corn; Indian corn or maize, broomcorn, and related plants; rice; wheat; coffee; Khapra beetle host articles; and gypsy moth host articles from Canada. In addition, § 319.19 separately prohibits the importation of citrus plants for planting (specifically, the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the family Rutaceae).

To reflect this, the plants for planting regulations limit their scope to restricted articles of plants for planting. In § 319.37–1, *restricted article* is defined as any regulated plant, root, bulb, seed, or other plant product capable of propagation, excluding the following:

- Prohibited articles;
- Articles whose importation is NAPPRA under § 319.37–2a;
- Any articles regulated in §§ 319.8 through 319.24 or 319.41 through 319.74–4; and
- Any articles regulated in 7 CFR part 360, which regulates the importation and interstate movement of plant taxa designated as noxious weeds.

(*Regulated plant* is separately defined to indicate exactly what organisms are considered plants for the purposes of the regulations.) The definition of *restricted article* excludes the plants for planting whose importation is regulated under the subparts mentioned earlier, except the Khapra beetle and gypsy moth subparts.

The restrictions on the importation of plants for planting under some of these subparts differ from the restrictions that would be placed on their importation under the general plants for planting regulations. For example, while the plants for planting regulations require all imported articles to be accompanied by a phytosanitary certificate, many of the other subparts do not. We consider a phytosanitary certificate (as defined in § 319.37–1) to be an essential means of determining the risk associated with plants for planting.

In general, we have determined that the restrictions in the plants for planting regulations are necessary to mitigate the

risks associated with the importation of all plants for planting, not just those that are currently defined as restricted articles. In addition, the current structure of the regulations is confusing for the reader, who may have to consult several subparts to determine which restrictions apply to the importation of a specific type of plants for planting. Therefore, we are proposing to amend the other subparts in part 319 to indicate that they do not regulate the importation of plants for planting and to remove provisions in those subparts that regulate the importation of plants for planting. Restrictions on the importation of articles other than plants for planting would not be affected in any way by these proposed changes.

These amendments would make it unnecessary to have a definition of *restricted article* in the regulations; the term "plants for planting" would include all articles subject to the restrictions in the plants for planting regulations. Therefore, we are proposing to remove the definition of *restricted article* from § 319.37–1 and to remove references to that term from the regulations. Instead, the regulations would simply refer to restrictions on the importation of plants for planting.

We are proposing to make several changes to the current definition of *plants for planting:*

- To make it clear that the scope of the regulations includes only regulated plants, we are proposing to amend the definition of *plants for planting* to refer specifically to regulated plants.
- The definition of *restricted article* refers to articles for or capable of propagation. This allows us to regulate the importation of commodities like birdseed, which is not intended for propagation but is distributed by consumers in a manner that could lead to its propagation. We are proposing to amend the definition of *plants for planting* to include plants capable of propagation, so that we would retain the discretion to regulate such plants.
- We do not believe it is necessary to state that plants for planting are intended to remain planted, to be planted or replanted when the definition refers to plants for or capable of propagation. Referring simply to plants that are for planting or capable of being planted would cover the relevant possibilities.
- The definition of *plant* indicates that the term includes any plant part. The definition of *plants for planting* incorporates the term *plant* and thus includes plant parts as well. However, since the regulations will now refer primarily to "plants for planting," we believe it would be useful to clarify in the definition of *plants for planting* that this term also includes any parts of a plant.

The revised definition of *plants for planting* would read: "Regulated plants (including any plant parts) that are for planting or capable of being planted."

We would amend the other subparts that currently regulate the importation of specific taxa of plants for planting as follows:

- Subpart—Foreign Cotton and Covers, which consists of §§ 319.8 through 319.8–26, regulates the importation of cottonseed, which can either be used for planting or for processing. We would add a new paragraph to § 319.8 indicating that the importation of cotton plants (including any plant parts) that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting." In addition, to make the scope of the subpart clear, we would amend the definition of *cottonseed* in § 319.8–1 to indicate that it only includes cottonseed intended for processing or consumption.
- Subpart—Sugarcane, which consists of §§ 319.15 and 319.15a, restricts the importation of all parts of the sugarcane plant, including sugarcane for planting. We would add a new paragraph to § 319.15 indicating that the importation of sugarcane plants and plant parts capable of remaining planted, being planted or replanted is restricted in "Subpart—Plants for Planting."
- We would remove Subpart—Citrus Canker and Other Citrus Diseases, which consists of § 319.19. As noted earlier, this subpart prohibits the importation of plants for planting from subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the family Rutaceae to prevent the introduction of citrus canker and other citrus diseases. As the scope of this subpart is limited to plants for planting, there is no need to retain any of its provisions as part of this consolidation. In addition, as part of this change, we would prohibit the importation of the other subfamily of Rutaceae, Flindersioideae. Although it is not specified in § 319.19 as being prohibited for importation, the importation of plants for planting from this subfamily would also be a pathway for the introduction of citrus canker and other citrus diseases, and we have prohibited the importation of Flindersioideae plants for planting in the past.
- Subpart—Corn Diseases, which consists of §§ 319.24 through 319.24–5, restricts the importation of Indian corn and maize and related plants from certain countries. We would add a new paragraph to § 319.24 indicating that the importation of corn plants (including any plant parts) that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting."
- Subpart—Indian Corn or Maize, Broomcorn, and Related Plants, which consists of §§ 319.41 through 319.41–6, also restricts the importation of Indian corn and maize and related plants from various countries. We would add a new paragraph to § 319.41 indicating that the importation of plants (including any plant parts) of any of the taxa listed as hosts of quarantine pests in paragraph (b) of that section that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting." In addition, we would make a change to reflect historical prohibitions that are not set out in this subpart. Historically, PPQ has prohibited the importation of corn seed of the genera *Echinochloa, Eleusine, Miscanthus, Panicum, Pennisetum, Setaria,* and *Tripsacum* from areas including Africa, Australia, Brazil, Bulgaria, Japan and adjacent islands, Korea, New Zealand, Oceania, the People's Republic of China, Southeast Asia, Taiwan, and the former Soviet Union, but this prohibition has not been reflected in the regulations. We would add seed of these taxa to the NAPPRA category as part of this action. We have prepared a pest risk analysis (PRA) in support of this action that details the quarantine pests associated with seed of these genera. The PRA can be viewed on Regulations.gov (see **ADDRESSES** above for instructions on accessing Regulations.gov). A copy of the PRA can also be requested from the person listed under **FOR FURTHER INFORMATION CONTACT.** We welcome public comment on this proposed action.
- Subpart—Rice, which consists of §§ 319.55 through 319.55–7, restricts the importation of seed or paddy rice, rice straw, and rice hulls. We would add a new paragraph to § 319.55 indicating that the importation of seed and paddy rice, which is always used for planting, is restricted in "Subpart—Plants for Planting." In addition, we would remove references to prohibitions or restrictions on the importation of seed and paddy rice. Specifically, we would remove the general prohibition on the importation of seed and paddy rice in § 319.55(a) and (b), the permit application requirement for seed and paddy rice in § 319.55–2(a), the port of entry requirements in § 319.55–3(a) and (c), the inspection and disinfection requirements in § 319.55–6(a), and the requirements for importation by mail in § 319.55–7.
- Subpart—Wheat Diseases, which consists of §§ 319.59–1 through 319.59–

4, restricts the importation of wheat articles from various countries. Articles regulated under the subpart are defined as "host crops" in § 319.59–1. In addition, the term *seed* is defined as wheat and triticale used for propagation. We would add a new paragraph to § 319.59–2 indicating that the importation of host crops, including seed, and any other plant parts that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting." We would also amend the definition of *grain* in § 319.59–1 to indicate that it includes only articles not for planting. We would also remove provisions related to the importation of seed in § 319.59–3(a) and § 319.59–4(a).

Subpart—Wheat Diseases also contains specific provisions regarding the importation of *Triticum* spp. plants, which are used for planting. We would remove the general prohibition on the importation of *Triticum* spp. plants in § 319.59–2(a) and the exception in § 319.59–2(b).

• Subpart—Coffee, which consists of §§ 319.73–1 through 319.73–4, regulates the importation of unroasted coffee, which can be used either for planting or processing. To make the scope of the subpart clear, we would amend the definition of *unroasted coffee* in § 319.73–1 to indicate that it only includes unroasted coffee intended for processing. Paragraph (a)(2) of § 319.73–2 lists coffee plants and leaves as articles whose importation is prohibited under Subpart—Coffee; we would revise paragraph (a)(2) so that it includes coffee leaves only. In addition, paragraph (b) of § 319.73–2 states that, due to the risk of Mediterranean fruit fly and other injurious insects, seeds of all kinds when in pulp, including coffee berries or fruits, are prohibited importation into all parts of the United States by § 319.37–2(a), except as provided in § 319.37–2(c). We are proposing to replace this paragraph with a general statement indicating that the importation of any coffee plants (including bare seeds, seeds in pulp, and any other plant parts) that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting."

Although the plants for planting regulated under the Khapra beetle and gypsy moth subparts are not excluded from the current definition of *restricted article,* we believe it is necessary to amend these subparts as well to clarify that the importation of plants for planting is governed by the plants for planting regulations.

• Subpart—Khapra Beetle, which consists of §§ 319.75 through 319.75–9, regulates the importation of articles of several different types to prevent the introduction of Khapra beetle into the United States. Currently, this subpart includes a definition of *nursery stock* (a synonym for "plants for planting" formerly used in the plants for planting regulations) and several provisions regulating the importation of nursery stock and plants. We are proposing to remove the definition of *nursery stock* in § 319.75–1 and the requirements for inspection and certification of nursery stock, plants, roots, and bulbs in § 319.75–9. (These requirements also refer to seed, but only seed not for propagation is restricted under this subpart.) In § 319.75–2, which lists restricted articles, footnote 1 states that the importation of certain restricted articles is subject to prohibitions or restrictions found elsewhere in 7 CFR part 319. We would add to this footnote a statement that the importation of any restricted articles that are for planting or capable of being planted is restricted under the plants for planting regulations.

• Subpart—Gypsy Moth Host Material from Canada, which consists of §§ 319.77–1 through 319.77–5, regulates the importation of several different types of articles to prevent the introduction of gypsy moth. Section 319.77–2 lists trees with roots and shrubs with roots as regulated articles; we would remove those articles from the list, as they are plants for planting. We would retain trees without roots in the list of regulated articles, as such trees are typically not used for planting. (A common example is Christmas trees.) Section 319.77–4 sets out conditions for the importation of restricted articles, including trees with roots and shrubs with roots. We would remove the references to those plants. In addition, footnote 1 to § 319.77–4 states that trees and shrubs from Canada may be subject to additional restrictions under the plants for planting regulations; we would remove this statement, as the importation of trees with roots and shrubs with roots from Canada would only be subject to the plants for planting regulations. We would retain the statement that trees may be subject to additional restrictions under Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles, as the importation of trees without roots would still potentially be regulated under that subpart.

None of the other subparts in 7 CFR part 319 regulates the importation of plants for planting. Of the subparts that regulate the importation of articles, Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles and Subpart—Fruits and Vegetables clearly indicate that they only regulate articles not for propagation. (We are proposing to update the reference to the plants for planting regulations in § 319.40–2(c) to refer to their newer name, "Subpart—Plants for Planting." We are proposing the same change in § 340.0.) However, Subpart—Cut Flowers, which consists of §§ 319.74–1 through 319.74–4, does not clearly indicate that it does not regulate the importation of plants for planting. Cuttings of flowers may also be intended for planting, in which case they should be and are regulated under the plants for planting regulations. Therefore, we are proposing to amend the definition of *cut flower* in § 319.74–1 to specify that cut flowers regulated under that subpart are not for planting.

As mentioned earlier, plants for planting that have been allowed to be imported under these subparts would now be subject to the general requirements of the plants for planting regulations, which is appropriate given the generally high risk associated with the importation of plants for planting. Any specific requirements for plants for planting whose importation is regulated under these subparts would remain unchanged.

These changes would harmonize our approach to mitigating the risk associated with imported plants for planting and make the regulations easier to use.

Adding Prohibited Plants for Planting to the NAPPRA List

The regulations in § 319.37–2(a) list types of plants for planting whose importation from specific areas is prohibited because they are hosts of quarantine pests. The prohibited plants are listed in a table that indicates the plants subject to the prohibition, the foreign places from which their importation is prohibited, and the plant pest(s) that are the cause of the prohibition. The types of plants for planting in this list have been added to the list based on a risk evaluation. Some of the types of plants for planting listed are simply listed as prohibited; others are prohibited unless imported in accordance with special inspection and certification requirements in § 319.37–5.

Paragraph (b) of § 319.37–2(b) prohibits the importation of certain additional types of plants for planting from all foreign countries except Canada based on size and age criteria. The importation of plants that do not meet these size and age criteria is prohibited because larger and older plants pose a higher pest risk than younger and smaller ones, and because it is impractical to inspect the listed plants

for quarantine pests when they are large and old.

The regulations in § 319.37–2a provide a process for listing the importation of taxa of plants for planting as not authorized pending pest risk analysis (NAPPRA), based on the risk of introducing a quarantine pest into the United States through the importation of the taxa. Such taxa are commonly referred to as "NAPPRA taxa," and the lists of such taxa as the "NAPPRA lists." The regulations do not set out the NAPPRA lists, but rather provide criteria and a process for adding taxa to the NAPPRA lists; the lists themselves are maintained on the PPQ Web site.[2]

We are proposing to remove the prohibited types of plants for planting in paragraphs (a) and (b) of § 319.37–2 from the regulations. We would add most of the types of plants for planting listed in paragraph (a) to the NAPPRA list of plants for planting that are hosts of quarantine pests.

We believe the existence of two categories of plants for planting whose importation into the United States is not allowed could confuse readers. For example, the importation of *Cedrus* spp. from Europe is prohibited in § 319.37–2(a) because Douglas fir canker and seedling disease, both quarantine pest pathogens, are present in Europe, and *Cedrus* spp. are hosts of those pathogens. If we receive evidence that one of those pathogens has spread to Asia, we would add *Cedrus* spp. to the NAPPRA list for Asia and for other countries not exporting *Cedrus* spp. to the United States, because there is a risk that the pathogen could spread to those countries before they decide in the future to export *Cedrus* spp. However, if someone reading the NAPPRA list on the plants for planting Web site saw that the importation of *Cedrus* spp. from Asia was NAPPRA, that person might not think to check the list of prohibited articles in § 319.37–2(a) in order to determine whether the importation of *Cedrus* spp. is prohibited from Europe, and thus might import or apply for an import permit for *Cedrus* spp. grown in (for example) Denmark. This change would eliminate the potential for such confusion.

In addition, adding the types of plants for planting whose importation is prohibited from § 319.37–2(a) to the NAPPRA list of hosts of quarantine pests would reflect the fact that, although these taxa may not be imported, anyone may still request that we conduct a PRA to determine what quarantine pests are currently associated with the importation of a prohibited taxon of plants for planting and the potential consequences of the introduction of those pests into the United States, as well as whether there are measures available to mitigate the risks those quarantine pests pose. Although our evaluation of these factors led us to prohibit the importation of all the taxa in § 319.37–2(a), this information may change. For example, new measures may become available to mitigate the risk associated with a particular pest, meaning that a previously infeasible importation can now be allowed subject to certain conditions. As another example, the pest that prompted the prohibition of the taxon may no longer be considered a quarantine pest, but new pests may be associated with a currently prohibited taxon that would require mitigation.

Some of the other subparts in 7 CFR part 319 that were discussed under the previous heading also prohibit the importation of specific plants for planting. As part of this proposal, we would move those plants for planting to the NAPPRA list as well.

The functions of paragraph (a) of § 319.37–2 and the list of NAPPRA taxa that are hosts of quarantine pests are similar—preventing the importation of taxa that have been determined to pose a risk for which mitigations have not been identified. However, some types of plants for planting in § 319.37–2(a) are listed as prohibited if they are not imported in accordance with special inspection and certification conditions. For example, *Malus* spp. are listed as prohibited from all countries if not meeting the conditions for importation in § 319.37–5(b), due to a diversity of diseases. This paragraph allows *Malus* spp. to be imported from six countries under specified conditions. The effect of this listed paragraph is to indicate that *Malus* spp. can be imported from six countries, subject to specific conditions, and is prohibited from the remainder of the world. We would add *Malus* spp. to the NAPPRA list from all countries but the six listed in § 319.37–5(b), and we would indicate elsewhere that importation of *Malus* spp. from those six countries is only allowed in accordance with the conditions listed in § 319.37–5(b). We would handle other such entries in the list of prohibited articles in § 319.37–2(a) in a similar manner.

Similarly, the types of plants for planting listed in paragraph (b) of § 319.37–2 can be safely imported subject to requirements specified in that paragraph. In addition, one prohibited type of plants for planting in § 319.37–2(a), seeds in pulp, does not correspond to a plant taxon and thus cannot be listed in NAPPRA, as the NAPPRA lists set out taxa of plants for planting that have been determined to be quarantine pests or hosts of quarantine pests. In both cases, these provisions are better thought of not as prohibitions but as requirements for the importation of these types of plants for planting. Accordingly, we would not add these types of plants for planting to the NAPPRA list. We will discuss the distribution of these restrictions under the next heading in this document.

Adding the prohibited types of plants for planting from § 319.37–2(a) to the NAPPRA list would necessitate additional changes to current § 319.37–2a.[3] This section has indicated that taxa on the NAPPRA lists can be imported under a Departmental permit in accordance with § 319.37–2(c); as we would remove paragraph (a) from that section and put the taxa listed there into the NAPPRA category, it is appropriate to move the Departmental permit provisions to the end of the NAPPRA section, as a new paragraph (f), with appropriate changes.

Paragraph (e) of § 319.37–2a discusses the removal of taxa from the NAPPRA list. Paragraph (e)(2) indicates that, if a PRA conducted for removal of a taxon from the NAPPRA list supports a determination that importation of the taxon be prohibited, or allowed subject to special restrictions, APHIS will publish a proposed rule making the PRA available to the public and proposing to take the action recommended by the PRA. As we are proposing to remove the lists of prohibited taxa from the regulations, it would no longer be necessary to publish a proposed rule if a PRA indicated that it was infeasible to mitigate the risk associated with the importation of a taxon and thus that the taxon should not be imported.

Accordingly, we are proposing to amend paragraph (e)(2) to indicate that, if the PRA indicates that the taxon is a quarantine pest or a host of a quarantine pest and the Administrator determines that there are no measures available that adequately mitigate the risk of introducing a quarantine pest into the United States through the taxon's importation, we would continue to list the taxon as NAPPRA. We would take comment on that determination by publishing a notice in the **Federal Register** making the PRA available for comment. If comments cause us to

[2] At *http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37_nappra.shtml.*

[3] In this document, we are proposing to redesignate § 319.37–2a as § 319.37–4. This change is discussed further under the heading "Restructuring of the Plants for Planting Regulations." The paragraph designations discussed in this section would remain the same.

change our determination, we would take comment on our new determination before removing the taxon from the NAPPRA list. If comments do not cause us to change our determination, we would publish a second notice responding to the comments and affirming our determination that the taxon should continue to be listed as NAPPRA.

We are also proposing to add text to clarify the provisions in paragraph (e). Paragraph (e)(1) describes how we will conduct a PRA in order to remove a taxon from the NAPPRA list. However, a taxon on the NAPPRA list of hosts of a quarantine pest will likely be listed as not authorized for importation from specific areas or countries where that pest is present. The PRA may not analyze the risks associated with the importation of the taxon from every country from which the taxon's importation is not authorized; it is most likely that it would analyze one country at a time, since we must work with the NPPO of each country in order to prepare a PRA. Therefore, we are proposing to add the following explanation to the end of the introductory text of paragraph (e): "The pest risk analysis may analyze importation of the taxon from a specific area, country, or countries, or from all areas of the world. The conclusions of the pest risk analysis will apply accordingly."

Paragraph (e)(1) also currently states that the PRA conducted for a taxon on the NAPPRA list will examine the risk associated with the importation of that taxon. We are proposing to indicate that the PRA will examine measures available to mitigate that risk as well. With this change, the regulations would more completely describe the goals of the PRA.

In addition, we are proposing one incidental change to current § 319.37–2a. As discussed under the next heading, we are proposing to move most of the information regarding the importation of specific types of plants for planting from the regulations to the Plants for Planting Manual. Paragraph (a) of § 319.37–2a currently indicates that the lists of NAPPRA taxa can be found on the PPQ Web site. To ensure that the Plants for Planting Manual is a comprehensive resource for information on the importation of specific types of plants for planting, we are proposing to indicate that the NAPPRA taxa will be listed in the Plants for Planting Manual as well.

Removing Restrictions on Specific Types of Plants for Planting From the Regulations; Establishing a Notice-Based Process for Updating Those Restrictions

Broadly, the regulations on the importation of plants for planting can be divided into two sets of requirements. As described earlier, some requirements apply to the importation of all or most plants for planting. Under § 319.37–3, most consignments of plants for planting must be imported with a permit. A phytosanitary certificate is also required for most plants for planting under § 319.37–4. Most plants for planting may not be imported in growing media under § 319.37–8, although they may be imported in specified packing materials under § 319.37–9. All imported plants for planting must be marked and identified in accordance with § 319.37–10, and almost all must be presented at a port of entry approved for such importation under § 319.37–14. This is not an exhaustive list, but it gives an idea of the conditions that apply to the importation of all or most plants for planting. Where exceptions exist for these requirements, they are typically based on a risk analysis (for example, the taxa of plants for planting that are allowed to be imported in growing media, subject to certain conditions, under § 319.37–8) or on a determination by the Administrator that there are other equivalent means of satisfying the requirement (for example, documentation that can be substituted for a phytosanitary certificate under § 319.37–4).

Some requirements in the plants for planting regulations, in turn, apply to the importation of specific types of plants for planting.

As previously discussed, in § 319.37–2, paragraph (b) sets out size and age criteria for the importation of specific types of plants for planting that are necessary in order to allow for inspection of those plants.

Section 319.37–5 sets out special inspection and certification requirements for the importation of specific plant taxa. These include simple requirements like inspection and certification of freedom from a quarantine pest by an NPPO, as in the requirements in paragraph (a) of that section for microscopic inspection of soil in which articles are grown in certain countries and certification of freedom from potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*). There are numerous requirements for certification that specific taxa are free from a plant pathogen or pathogens based on examination or testing of mother stock. The section also includes relatively complex sets of requirements to ensure that specific taxa are free from quarantine pests, such as the program for *Pelargonium* spp. and *Solanum* spp. grown in areas where *Ralstonia solanacearum* race 3 biovar 2 exists in paragraph (r) and the program for greenhouse-grown plants from Israel in paragraph (v).

Section 319.37–6 lists taxa of seeds and bulbs for planting that may only be imported if treated in accordance with 7 CFR part 305. Section 319.37–7 lists taxa of plants for planting that may be imported only into postentry quarantine, for the purposes of observation to determine whether they are infected with quarantine pests. As noted earlier, § 319.37–8 makes exceptions from its general prohibition on the importation of plants for planting in growing media; those exceptions, and the requirements that must be fulfilled in order to import the excepted taxa in growing media, are listed in that section.

Importers and inspectors rarely need to, for example, find a list of plants that are subject to treatment; they want to know what restrictions apply to the specific plants that they wish to import or that have been presented for inspection. For port inspectors, we created the Plants for Planting Manual as a reference. This manual lists all types of plants for planting to which specific importation restrictions apply and either the specific restrictions themselves or the place in the regulations where the restrictions can be found, allowing inspectors to quickly look up any individual plant to determine what conditions apply to its importation. Importers and the public frequently use the Plants for Planting Manual for this purpose as well.

We are proposing to remove all the restrictions on the importation of specific types of plants for planting from the regulations and instead list them in the Plants for Planting Manual. The Plants for Planting Manual would contain the specific restrictions currently in the regulations.

As the Plants for Planting Manual and the regulations would indicate that the specific restrictions in the manual must be complied with in order to import the specified types of plants for planting into the United States, there would be no need to reproduce the prohibitions in § 319.37–2(a) on plants for planting not imported in accordance with the regulations. However, the size and age restrictions in § 319.37–2(b) would be treated as restrictions on the

importation of specific types of plants for planting and moved to the Plants for Planting Manual, and we would include the prohibition against the importation of seeds in pulp in § 319.37–2(a) by adding a specific restriction to the Plants for Planting Manual that seeds may not be imported in pulp. In addition, the restrictions on the importation of specific types of plants for planting that are currently found in other subparts in 7 CFR part 319 would be moved to the Plants for Planting Manual. We are not proposing to change any of the specific restrictions currently in the plants for planting regulations as part of this action; this change would be purely administrative.

Moving the specific restrictions to the Plants for Planting Manual would provide organizational advantages, allowing users of the regulations to more quickly and easily determine what specific restrictions apply to the importation of a plant. It also would allow for the creation of a process in which we publish notices in the **Federal Register** to take public comment on additions to, updates to, or removals of restrictions on the importation of specific types of plants for planting and make the consequent changes in the Plants for Planting Manual (commonly referred to as a notice-based process), rather than our current process of publishing rules in the **Federal Register** and updating the regulations themselves.

APHIS uses notice-based processes to accomplish several different kinds of changes, including allowing the importation of fruits and vegetables subject to certain conditions (a process described in § 319.56–4), allowing the interstate movement of fruits and vegetables from Hawaii and U.S. territories subject to certain conditions (§ 318.13–4), adding, revising, or removing treatment schedules in the PPQ Treatment Manual (§ 305.3), and, as discussed earlier, adding taxa of plants for planting to the NAPPRA lists. In a typical notice-based process, an initial notice is published in the **Federal Register** that describes a change we are considering and makes a document providing the scientific basis for that change available for public comment. For example, when we determine it necessary to add a taxon to one of the NAPPRA lists, we publish a notice advising the public of our determination and provide a data sheet that details the scientific evidence APHIS evaluated in making the determination that the taxon is a quarantine pest or a host of a quarantine pest. We solicit public comments on the notice. After the public comment period, we publish a second notice that either announces the addition of the taxon to the NAPPRA list, if the comments we receive do not cause us to change our determination that the taxon is a quarantine pest or a host of a quarantine pest, or announcing that the taxon will not be added to the NAPPRA list.

We added the NAPPRA provisions to the regulations in a final rule published in the **Federal Register** on May 27, 2011 (76 FR 31172–31210, Docket No. APHIS–2006–0011) and effective on June 27, 2011. We expect that our use of these provisions will eventually result in a large number of taxa being added to the NAPPRA lists and thus not authorized for importation. To remove a NAPPRA taxon from its list, as noted earlier, we will complete a PRA. Currently, if the PRA recommended specific mitigations as a condition for the importation of the taxon, we would need to undertake rulemaking to amend the regulations to provide for such conditions, based on that PRA. Rulemaking entails many procedural requirements, meaning a typical rulemaking takes from 18 months to 3 years to successfully complete. We anticipate that using a notice-based process to specify restrictions under which NAPPRA taxa could be imported would result in measurable time savings over the rulemaking process while continuing to allow for public input on the PRA, including the pest risk management measures it recommends.

In addition, quarantine pest conditions in the world are constantly changing. A set of provisions currently approved to mitigate all quarantine pest risks associated with the importation of a specific taxon may not be suitable if a new quarantine pest is introduced into an area. If well-known measures to mitigate the risk associated with this quarantine pest exist, often the emergency action we take in response to the spread of the quarantine pest will be to allow the continued importation of host taxa from the newly infested area subject to those measures. However, due to the time-consuming nature of rulemaking, the regulations often do not reflect in a timely manner the imposition of those measures, although the Plants for Planting Manual does. Having a notice-based process in place to revise current taxon-specific requirement would allow us to give notice of our determination that revised restrictions are necessary and take public comment on our determination and our new requirements for the importation of a taxon in a timely manner.[4]

Before implementing any final rule with respect to this proposal, we would of course revise the Plants for Planting Manual, not only to incorporate all the information about restrictions on specific types of plants for planting that is currently in the regulations but also to make it easier to read and use as a reference.

The details of the specific requirements we would remove from the regulations are discussed later in this document under the heading "Restructuring of the Plants for Planting Regulations." Here we will describe our proposed § 319.37–20, which would set out a notice-based process for adding, changing, or removing restrictions on the importation of specific types of plants for planting.

Paragraph (a) of proposed § 319.37–20 would provide that, in addition to the general restrictions in the plants for planting regulations, the Administrator may impose additional restrictions on the importation of specific types of plants for planting necessary to effectively mitigate the risk of introducing quarantine pests into the United States through the importation of those plants for planting. Additional restrictions may be placed on the importation of the entire plant or of certain plant parts, as a quarantine pest may not be associated with all parts of a plant. (Seed is the most common exception.) A list of the types of plants for planting whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of each type, would be found in the Plants for Planting Manual. In § 319.37–1, we would define the *Plants for Planting Manual* as the document that contains restrictions on the importation of specific types of plants for planting, as provided in § 319.37–20, and other information about the importation of plants for planting as provided in the plants for planting regulations. The definition would indicate where the Plants for Planting Manual is available as well.

Paragraph (b) of proposed § 319.37–20 would provide that the Administrator may determine that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting, based on the risk of introducing a quarantine pest through

[4] If the introduction of a quarantine pest into a new area caused us to determine that the importation of host taxa from that area should not be authorized, due to the lack of available measures to mitigate the quarantine pest risk, we would add those taxa to the NAPPRA category, possibly after issuing a Federal order.

the importation of that type of plants for planting. This text would explicitly indicate that the reason we would impose specific restrictions is a determination by the Administrator that the restrictions are necessary to effectively mitigate the risk of introducing quarantine pests into the United States.

Paragraph (b) would also state that the Administrator will make such a determination based on the findings of a PRA or on other scientific evidence. Although we would normally use a PRA to determine what restrictions are appropriate for a plant's importation, one example of other scientific evidence we might use is results from experiments or research conducted on a plant when it is imported under a Departmental permit.

Paragraph (c) would describe the process for adding, changing, or removing specific restrictions. Under this process, we would initially publish in the **Federal Register** a notice that announces our determination that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting. This notice would make available a document describing the restrictions that the Administrator has determined are necessary and how these restrictions will mitigate the risk of introducing quarantine pests into the United States. (In a PRA, this document would typically be the risk management section of the PRA.) We would typically make this document available for comment for 60 days. This would allow the public to comment both on the quarantine pest risks we have identified and on the means we have chosen to mitigate them.

After the close of the comment period, we would issue a second notice. This notice would inform the public of the specific restrictions, if any, that the Administrator has determined to be necessary in order to mitigate the risk of introducing quarantine pests into the United States through the importation of the type of plants for planting. In response to the information submitted in public comments, the Administrator might implement the restrictions described in the document made available by the initial notice, amend the restrictions in response to public comment, or determine that changes to existing restrictions are unnecessary.

It is important to note that the Plants for Planting Manual does not just contain restrictions on the importation of plants for planting; it also contains explanation of and guidance on how to fulfill those restrictions, as well as instructions for how to inspect imported plants for planting, lists of facilities approved to export plants for planting under certain programs, and other information. We would not publish a notice in the **Federal Register** every time we determine that it is necessary to change something in the Plants for Planting Manual; we would only do so to add, change, or remove phytosanitary measures imposed on the importation of specific types of plants for planting to mitigate the risk of introducing quarantine pests. For example, we would publish a notice in the **Federal Register** to add a requirement that a taxon be produced in a pest-free place of production, but we would not publish a notice to update the list of approved pest-free places of production that produce the taxon for export to the United States.

Paragraph (d) would address types of plants for planting whose importation is currently subject to specific restrictions. As noted, we would move these restrictions to the Plants for Planting Manual without changing them. However, we may need to change them in the future. Paragraph (d) would indicate that plants for planting whose importation is currently subject to plant type-specific restrictions in the regulations would continue to be subject to those restrictions, except as changed in accordance with the process specified in proposed paragraph (c).

These changes would necessitate an update to the NAPPRA provisions in current § 319.37–2a. As discussed earlier, paragraph (e)(2) of that section currently indicates that, if a PRA conducted for removal of a taxon from the NAPPRA list supports a determination that importation of the taxon be prohibited or allowed subject to special restrictions, such as a systems approach, treatment, or postentry quarantine, APHIS will publish a proposed rule making the PRA available to the public and proposing to take the action recommended by the PRA. We discussed earlier our proposed changes to paragraph (e)(2) to accommodate moving some of the prohibited types of plants for planting into the NAPPRA category. Since we would no longer publish proposed rules in order to add restrictions on specific types of plants for planting, we would add a new paragraph (e)(3) indicating that, if the PRA supports a determination that importation of the taxon be allowed subject to plant type-specific restrictions, APHIS would publish a notice making the PRA available to the public in accordance with the process in proposed § 319.37–20(c).

We are also proposing to remove specific exceptions to general restrictions from the regulations and update them through this notice-based process. For example, paragraph (e) of § 319.37–8 specifies taxa that may be imported in specified growing media if they meet certain requirements. We are proposing to remove such lists of types of plants for planting from the regulations and instead list these plants, and the conditions that apply to their importation, in the Plants for Planting Manual. The specific changes we would make are discussed directly below.

Restructuring of the Plants for Planting Regulations

Consolidating the regulations in 7 CFR part 319 that govern the importation of plants for planting, removing the term *restricted article,* removing the lists of prohibited taxa, and removing all restrictions on the importation of specific types of plants for planting would necessitate a restructuring of the plants for planting regulations. Below we present an outline of the revised plants for planting regulations and a distribution table, showing where the provisions of the regulations that we are retaining would be located in the restructured subpart and where the provisions we are moving would be found.

General Requirements

§ 319.37–1 Notice of quarantine.
§ 319.37–2 Definitions.
§ 319.37–3 General restrictions on the importation of plants for planting.
§ 319.37–4 Taxa of plants for planting whose importation is not authorized pending pest risk analysis.
§ 319.37–5 Permits.
§ 319.37–6 Phytosanitary certificates.
§ 319.37–7 Marking and identity.
§ 319.37–8 Ports of entry: Approved ports, notification of arrival, inspection, and refusal of entry.
§ 319.37–9 Treatment of plants for planting; costs and charges for inspection and treatment; treatments applied outside the United States.
§ 319.37–10 Growing media.
§ 319.37–11 Packing and approved packing material.

Provisions for Restrictions on Specific Types of Plants for Planting

§ 319.37–20 Restrictions on the importation of specific types of plants for planting.
§ 319.37–21 Integrated pest risk management measures.
§ 319.37–22 Trust fund agreements.
§ 319.37–23 Postentry quarantine.

TABLE 1—PROPOSED DISTRIBUTION OF CURRENT PLANTS FOR PLANTING REGULATIONS

Current section	Current paragraph(s)	Proposed location	Notes
§ 319.37 (notice of quarantine).	(a)	Removed	Replaced with § 319.37–1(a) and (b).
	(b)	§ 319.37–8(d)	
	(c)	§ 319.37–8(e)	
	Footnotes 1 and 2	§ 319.37–1(e) and (f)	
§ 319.37–1 (definitions)		§ 319.37–2	Definitions of terms no longer used would be moved to the Plants for Planting Manual; definitions of terms used in new provisions would be added.
§ 319.37–2 (prohibited articles).	(a) and (b)	Removed	Prohibited taxa would be moved to NAPPRA category and Plants for Planting Manual (as discussed earlier).
	(c)	§ 319.37–4(f)	Would be changed to reflect NAPPRA category
§ 319.37–2a (NAPPRA)		§ 319.37–4	Changes to this section were discussed in detail earlier.
§ 319.37–3 (permits)	(a)	§ 319.37–5(a)	Would be converted from a list of types of plants for planting that require a permit to a general requirement for a permit, with exceptions in the Plants for Planting Manual.
	(b) through (f)	§ 319.37–5(b) through (f)	Minor updates.
§ 319.37–4 (phytosanitary certificates).	(a)	§ 319.37–6(a)	Amended to reflect changes elsewhere in section.
	(b)	§ 319.37–8(c)	
	(c)	Removed	Would be moved to Plants for Planting Manual.
	(d)	§ 319.37–6(b)	
	(e)	Removed	Would be moved to Plants for Planting Manual.
§ 319.37–5 (inspection and certification).		Removed	Would be moved to the Plants for Planting Manual.
§ 319.37–6 (treatment)		Removed.	
§ 319.37–7 (postentry quarantine).	(a)	§ 319.37–23(a)	Table of restricted taxa in (a) and list of taxa in (b) would be moved to the Plants for Planting Manual.
	(b)	Removed.	
	(c) and (d)	§ 319.37–23(b) and (c)	Paragraphs would be greatly simplified.
	(e) and (f)	§ 319.37–23(d) and (e)	
§ 319.37–8 (growing media)	(a)	§ 319.37–10(a)	
	(b)	(b)	List of articles from Canada that cannot be imported in growing media would be moved to Plants for Planting Manual.
	(c) and (d)	(c)	Approved growing media would be moved to Plants for Planting Manual.
	(e)	(d)	Lists of approved growing media and taxa that may be imported in growing media would be moved to Plants for Planting Manual.
§ 319.37–9 (packing materials).		§ 319.37–11(b)	List of approved packing materials would be moved to the Plants for Planting Manual.
§ 319.37–10 (marking and identity).		§ 319.37–5	Minor changes proposed.
§ 319.37–11 (arrival notification).		§ 319.37–8(b)	
§ 319.37–12 (prohibited and restricted articles).		§ 319.37–11(a)	
§ 319.37–13 (treatment outside the United States).		§ 319.37–9	Minor changes proposed
§ 319.37–14 (ports of entry)		§ 319.37–8(a)	List of USDA plant inspection stations would be moved to the Plants for Planting Manual.

We now describe each section in our proposed revision of the plants for planting regulations, including the sections of the current regulations from which they were derived.

Notice of Quarantine

Proposed § 319.37–1 would provide official notice of the quarantine we have established on the importation of plants for planting. It would fulfill a function similar to that of current § 319.37(a), but with different wording, since the current language refers to prohibited and restricted articles. Proposed paragraph (a) of § 319.37–1 would indicate that, under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

Paragraph (b) would state that the Secretary has determined that it is necessary to designate the importation of specific taxa of plants for planting as NAPPRA, as provided in proposed § 319.37–4. It would further state that the Secretary has determined that it is necessary to restrict the importation into the United States of all other plants for planting and to impose additional restrictions on the importation of specific types of plants for planting, in accordance with the plants for planting

regulations and as described in the Plants for Planting Manual.

We would add a new paragraph (c) to clarify that the importation of plants that are intended for processing is not regulated under the plants for planting regulations. As discussed earlier, some plants can be used either for planting or for processing. Importation of plants for processing typically poses a much lower risk than importation for planting, as most processing greatly reduces or eliminates the potential for pest introduction. Plants imported for processing may thus be subject to less stringent importation requirements than plants for planting. It has been our practice to determine whether plants are being imported for processing based on documentation accompanying the plants. For example, the Harmonized Tariff Schedule has different codes for plants imported as live plants and plants imported for processing. Therefore, proposed paragraph (c) would indicate that the importation of plants that are imported for processing, as determined by an inspector based on documentation accompanying the articles, is not subject to the plants for planting regulations.

Paragraph (d) would indicate that the importation of taxa of plants for planting that are listed in 7 CFR part 360, which imposes restrictions on the importation of plant taxa designated as noxious weeds, and part 361, which imposes restrictions on the importation of certain types of seed, is subject to the restrictions in those parts. This text would help inform readers about the other parts in 7 CFR chapter III that contain regulations that apply to the importation of plants for planting. The taxa listed in 7 CFR parts 360 and 361, and the restrictions that apply to their importation, are also listed in the Plants for Planting Manual, making it a comprehensive reference.

Paragraphs (e) and (f) would incorporate into the main body of the regulations the information contained in current footnotes 1 and 2 to the subpart heading. Paragraph (e) would indicate that PPQ also enforces regulations promulgated under the Endangered Species Act of 1973 (Pub. L. 93–205, as amended) which contain additional prohibitions and restrictions on importation into the United States of plants for planting subject to the plants for planting regulations (see 50 CFR parts 17 and 23).

Paragraph (f) would state that one or more common names of plants for planting are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the plants for planting represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all plants for planting within the taxon represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name. (The current footnote 2 refers to "category" rather than "taxon"; the latter term is more precise and is defined in the regulations.)

We are also proposing to add in paragraph (f) an advisory that when restrictions apply to the importation of a taxon of plants for planting for which there are taxonomic synonyms, those restrictions apply to the importation of all the synonyms of that taxon as well. Synonyms are commonly listed in the Germplasm Research Information Network, which is maintained by the USDA's Agricultural Research Service. Treating synonyms the same is our current practice for plants for planting, as calling a taxon by a synonym rather than the name listed in the regulations does not change the risk it poses, but the regulations do not currently reflect this practice.

Definitions

Proposed § 319.37–2 would contain definitions of terms used in the plants for planting regulations. We would retain as they currently appear in the regulations the definitions of *bulb, earth, inspector, noxious weed, official control, person, plant, plant pest, Plant Protection and Quarantine Programs, planting, port of first arrival, preclearance, production site, quarantine pest, regulated plant, Secretary, soil, State, State Plant Regulatory Official, taxon,* and *United States.*

We are proposing to remove these definitions from the regulations: *Clean well water, disease, Europe, indexing, Oceania, potable water,* and *Solanum spp. true seed.* These terms relate to plant type-specific restrictions and, with the removal of those restrictions, would no longer be used in the regulations. However, we would add these definitions to the Plants for Planting Manual.

We are also proposing to remove the definitions of *prohibited article* and *restricted article* for reasons discussed earlier.

We are proposing to remove the definition of *Deputy Administrator* and all references to the Deputy Administrator in the regulations. In their places, we would add references to the Administrator. In § 319.37–2, we would add a definition of *Administrator* to read: "The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture authorized to act in his or her stead." This would make the plants for planting regulations consistent with other subparts in part 319, which refer to the Administrator as the decisionmaking authority within APHIS.

Besides the new definition of *Plants for Planting Manual* discussed earlier, we are proposing to add definitions of *consignment, lot, mother stock, national plant protection organization (NPPO), place of production,* and *type of plants for planting.* The proposed definition of *consignment* is based on the definition of that term in the International Plant Protection Convention's (IPPC) Glossary of Phytosanitary Terms.[5] The proposed definition reads: "A quantity of plants for planting being moved from one country to another and covered, when required, by a single phytosanitary certificate (a consignment may be composed of one or more lots or taxa)." We are proposing to define "lot" as a number of units of a single commodity, identifiable by its homogeneity of composition and origin, forming all or part of a consignment. We are also proposing to replace the term "shipment" (as a noun) with "consignment" where the former term appears in the regulations.

The definition we are proposing to add for *national plant protection organization (NPPO)* would read: "The official service established by a government to discharge the functions specified by the International Plant Protection Convention." This definition is also based on a definition in the IPPC Glossary. We would replace references in the regulations to "plant protection service" and similar terms with references to "NPPO."

These changes would make our regulations consistent with international standards.

In this document, we have referred broadly to the categories of plants regulated in the plants for planting regulations as "types of plants for planting." Many of the restrictions in the regulations are specific to taxa of plants, but others address other categories of plants on the basis of shared risk factors. For example, the regulations in § 319.37–4(c) allow for the importation of greenhouse-grown plants from Canada without a

[5] International Standard for Phytosanitary Measures (ISPM) No. 5. To view this and other ISPMs on the Internet, go to *http://www.ippc.int/* and click on the "Adopted Standards" link under the "Core activities" heading.

phytosanitary certificate, provided that certain conditions are met. This program applies to any taxon of plants that is grown in a certified greenhouse in Canada; both of these factors (growing conditions and origin) contribute to the plants' eligibility for the program. Similarly, many of the size and age restrictions in § 319.37–2(b) apply to broad categories of plants, such as naturally dwarfed trees and shrubs.

To facilitate applying restrictions to specific types of plants for planting in accordance with the proposed regulations and in the Plants for Planting Manual, we are proposing to add a definition of *type of plants for planting* to the regulations. The definition would read: "A grouping of plants for planting based on shared characteristics such as biological traits, morphology, botanical nomenclature, or risk factors." Thus, "type of plants for planting" includes shared botanical nomenclature but also includes any other shared risk factors that can serve as a basis for imposing restrictions on the importation of plants for planting. We welcome comment on this approach.

The definitions of the other new terms will be discussed where they appear in the proposed regulations.

Besides amending the definition of *plants for planting* as discussed earlier in this document, we are proposing to amend a few other existing definitions to reflect changes in this proposal. The definition of *from* states that an article is considered to be "from" any country or locality in which it was grown, except that it can be considered to be from Canada if certain conditions are fulfilled. One of the conditions is that the article is not prohibited nor subject to restrictions under certain paragraphs of § 319.37–5, subject to a required treatment under § 319.37–6, or subject to postentry quarantine under § 319.37–7. We would replace the reference to prohibited articles with a reference to plants for planting whose importation is NAPPRA in accordance with proposed § 319.37–4. In addition, as all restrictions on specific types of plants for planting would now be found in the Plants for Planting Manual, we would update the definition to require that the plants for planting may not have been subject to certain import restrictions under § 319.37–20. These restrictions would be the same as those listed in the current definition of *from*. We would list those restrictions in the Plants for Planting Manual. We would also replace references to "articles" in this definition with references to "plants for planting."

We would shorten the defined term *phytosanitary certificate of inspection* to *phytosanitary certificate*, as completing such certificates can require much more than a simple inspection. The definition indicates that a phytosanitary certificate is a document related to a restricted article; we would amend the definition to indicate that it is a document related to a consignment of plants for planting.

Finally, we would amend the defined term *Spp. (species)* by switching the order of the words, i.e., making the defined term *Species (spp.)*. This would put the word "species" before its abbreviation, the more common way of presenting such information.

General Restrictions on the Importation of Plants for Planting

To help readers navigate the new plants for planting regulations, we would provide an overall guide to their structure in proposed § 319.37–3. This section would indicate that the importation of certain taxa of plants for planting is NAPPRA in accordance with proposed § 319.37–4. General restrictions that apply to the importation of all plants for planting other than those whose importation is NAPPRA in accordance with proposed § 319.37–4 would be found in proposed §§ 319.37–5 through 319.37–11.

Just as restrictions on the importation of specific taxa of plants for planting are found throughout the current regulations, so are restrictions on the importation of all or most types of plants for planting found throughout the current regulations. The goal of this restructuring is to group all the general requirements together in the regulations, to make it easier for readers to determine what requirements apply to all or most imported plants for planting.

Proposed § 319.37–3 would also state that, in accordance with proposed § 319.37–20, the Administrator may impose restrictions on the importation of specific types of plants for planting. These restrictions would be listed in the Plants for Planting Manual. (The break between proposed §§ 319.37–11 and 319.37–20 is intended to emphasize the fact that the former would be the end of the general restrictions in the regulations, after which provisions for imposing restrictions on the importation of specific types of plants for planting would be found.)

In addition, proposed § 319.37–3 would note that additional information on certain restrictions on the importation of specific types of plants for planting could be found in proposed §§ 319.37–21 through 319.37–23. Although we are proposing to remove specific restrictions from the regulations, we are also proposing to provide general requirements for certain specific restrictions. Specifically, proposed § 319.37–21 would discuss integrated pest risk management measures; § 319.37–22 would discuss trust funds that may be required if APHIS is involved in mitigations in a foreign country; and § 319.37–23 would include the remaining postentry quarantine requirements. We will discuss these proposed sections in order later in this document.

Taxa of Plants for Planting Whose Importation Is Not Authorized Pending Pest Risk Analysis

Proposed § 319.37–4 would contain the NAPPRA regulations currently found in § 319.37–2a, with the changes discussed earlier in this document.

Permits

Proposed § 319.37–5 would include most of the current permit requirements in § 319.37–3, with changes as discussed below.

Paragraph (a) of current § 319.37–3 lists articles for which a written permit is required for importation. As noted earlier, paragraph (a)(5) of § 319.37–3 requires lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada to be imported into the United States with a written permit. This means that most consignments of plants for planting are imported with a permit; the exceptions for which a permit is not required are lots of 12 or fewer articles other than seeds, bulbs, or sterile cultures of orchid plants, and all lots of seeds, bulbs, or sterile cultures of orchid plants, that do not include of types of plants for planting addressed by the other subparagraphs in paragraph (a).

We are proposing to revise current § 319.37–3(a) to indicate that a permit is generally required for all plants for planting, with exceptions listed in the Plants for Planting Manual. Exceptions would be added, changed, or removed in accordance with proposed § 319.37–20. This would allow us to update the list of exceptions through a notice when necessary and take public comment on any changes we make.

In addition, we would make some changes to the list of types of plants for planting that require a permit as part of moving this information into the plants for planting manual. The current list indicates that permits are required for articles subject to treatment requirements; articles subject to postentry quarantine requirements; and articles subject to other specific conditions elsewhere in the regulations (specifically, *Solanum tuberosum* true seed imported from Chile, *Fraxinus* spp.

imported from Canada, and small lots of seed imported without a phytosanitary certificate). As we are proposing to remove all these specific requirements from the regulations, we would indicate in the Plants for Planting Manual that a permit is required for any consignment of 12 or fewer plants for planting whose importation is subject to specific restrictions in accordance with proposed § 319.37–20.

This change would mean that a permit would be required for any type of plants for planting whose importation is subject to specific restrictions, not just those currently named in the regulations. We believe that a permit is necessary as an additional safeguard for the importation of these plants; that importation has already been determined to pose a risk, which is why we have imposed specific restrictions on it, and the permit provides an additional means of communicating those specific restrictions to the importer. We expect that this change will have a very small impact on the importation of plants for planting, since most lots of plants for planting to which specific restrictions apply are composed of 13 or more articles and are thus required to be accompanied by a permit under paragraph (a)(5) of § 319.37–3. However, we invite public comment on the impacts of this proposed change.

We would also add a statement in proposed paragraph (a)(2) that plants for planting whose importation is subject to postentry quarantine must also be imported under an importer postentry quarantine growing agreement. This requirement is found in § 319.37–7(a)(2) of the current regulations, and we would retain it in this proposal; we would add the reference here to help readers be aware of all the documentation requirements that apply to plants imported into postentry quarantine.

The requirements currently found in paragraphs (a)(3), (a)(4), (a)(6), (a)(7), and (a)(17) through (a)(19) of § 319.37–3 would be moved to the Plants for Planting Manual, with minor changes to reflect the change from "restricted articles" to "plants for planting" discussed earlier.

Paragraphs (a)(8) through (a)(16) of § 319.37–3 contain requirements for permits for articles that are destined to specific States. We are not proposing to include these paragraphs in the Plants for Planting Manual because we no longer use permits to notify States of these potential importations; that is accomplished through an electronic notification system.

Paragraph (b) of § 319.37–3 contains instructions on applying for a permit. We would include these instructions in paragraph (b) of § 319.37–5, but would update the address to which to write to apply for a permit. We would also include a Web address at which one can apply for a permit. With these changes, paragraph (b) of proposed § 319.37–5 would require an application for a written permit to be submitted to PPQ (Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permits, Permit Unit, 4700 River Road Unit 133, Riverdale, MD 20737–1236) at least 30 days prior to arrival of the plants for planting at the port of entry. It would indicate that application forms are available without charge from that address or on the Web at *http://www.aphis.usda.gov/permits/ppq_epermits.shtml.* The completed application would have to include the following information:

- Name, address, and telephone number of the importer;
- The taxon or taxa and the approximate quantity of plants for planting intended to be imported. Current paragraph (b)(2) refers to the "kinds (botanical designations) of articles intended to be imported." We would instead refer to "taxon or taxa" to be consistent with the rest of the regulations;
- Country(ies) or locality(ies) where grown;
- Intended United States port of entry;
- Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and
- Expected date of arrival.

Paragraphs (c) through (f) of § 319.37–3 contain provisions for issuing permits, withdrawing permits, and oral permits. We would retain those paragraphs without substantive changes in proposed § 319.37–5, although we would change references to "articles" to "plants for planting" and references to the Deputy Administrator to refer to the Administrator. Paragraph (e) currently refers to articles not designated as required to be imported with a permit in § 319.37–3(a); we would amend this paragraph to refer to plants for planting not required to be imported with a permit in accordance with proposed § 319.37–5(a), to reflect the other changes we have proposed.

Phytosanitary Certificates

Proposed § 319.37–6 would contain the general requirements for phytosanitary certificates that are currently found in § 319.37–4.

Section 319.37–4 is headed "Phytosanitary certificates of inspection," and the introductory text of paragraph (a) in § 319.37–4 states that any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate of inspection. We would amend the section heading and this requirement by removing the words "of inspection," for reasons discussed earlier. We would also amend paragraph (a) to refer to plants for planting offered for importation, rather than restricted articles.

The introductory text of paragraph (a) also includes requirements for identification of the taxon of plants for planting that it accompanies, which we would retain. The text currently requires the phytosanitary certificate that accompanies a restricted article must identify the genus and species or cultivar of that article when the regulations place restrictions on individual species or cultivars within a genus. We would amend this requirement to indicate that such identification is required when the importation of individual species or cultivars within a genus is restricted in accordance with proposed § 319.37–20. The remaining identification requirements, for designation of intergeneric and interspecific hybrids, would remain unchanged.

Within § 319.37–4(a), subparagraphs (a)(1) through (a)(4) list exceptions to the requirement for a phytosanitary certificate. Paragraphs (c), (d), and (e) of § 319.37–4 set out specific requirements under which certain types of plants for planting may be imported without a phytosanitary certificate; these paragraphs cover greenhouse-grown plants from Canada, small lots of seed, and certain seeds from Canada, respectively.

With the exception of the requirements for small lots of seed, we are proposing to remove these specific requirements from the regulations and instead include them in the Plants for Planting Manual. We would retain the requirements for small lots of seed because they do not apply to a specific type of plants for planting; rather, they limit importations of seed to quantities that make an extremely thorough inspection of the seed practical. These requirements would be included in paragraph (b) of proposed § 319.37–6, with minor changes to reflect new section designations and other changes proposed in this document.

To cover the other current exceptions to the requirement for a phytosanitary certificate, paragraph (c)(1) of proposed § 319.37–6 would state that the Administrator may authorize the importation of types of plants for planting without a phytosanitary certificate if the plants for planting are

accompanied by equivalent documentation agreed upon by the Administrator and the NPPO of the exporting country as sufficient to establish the origin, identity, and quarantine pest status of the plants. The documentation would have to be provided by the NPPO or refer to documentation of the origin, identity, and quarantine pest status of the plants for planting provided by the NPPO. The documentation would have to be agreed upon before the plants for planting are exported from the exporting country to the United States. These general conditions are fulfilled by each of the sets of provisions in the current regulations under which types of plants for planting may be imported without a phytosanitary certificate. In fact, these general conditions are necessary to provide the same information as would be provided by a phytosanitary certificate.

Paragraph (c)(2) of proposed § 319.37–6 would indicate that the Administrator may impose additional restrictions on the importation of plants for planting that are not accompanied by a phytosanitary certificate to ensure that the plants are appropriately identified and free of quarantine pests. Paragraph (c)(3) would indicate that the Plants for Planting Manual lists plants for planting that are not required to be accompanied by a phytosanitary certificate; the countries from which their importation without a phytosanitary certificate is authorized; the approved documentation of their origin, identity, and quarantine pest status; and any additional conditions on their importation.

Paragraph (c)(4) of proposed § 319.37–6 would indicate that types of plants for planting may be added to or removed from the list of plants for planting that are not required to be accompanied by a phytosanitary certificate in accordance with proposed § 319.37–20. The requirements for importing specific types of plants for planting without a phytosanitary certificate could also be changed in accordance with § 319.37–20. The notice published for comment would describe the documentation agreed upon by the Administrator and the NPPO of the exporting country and any additional restrictions to be imposed on the importation of the type of plants for planting. This provision would allow for the importation of plants for planting without a phytosanitary certificate provided the conditions of proposed paragraph (c)(1) are met, with any additional conditions the Administrator determines to be necessary under proposed paragraph (c)(2). Requiring plants for planting to be authorized for importation without a phytosanitary certificate in accordance with proposed § 319.37–20 would allow for public input on the change.

Marking and Identity

Proposed § 319.37–7 would contain requirements for marking and identity of imported plants for planting that are substantially identical to the requirements currently found in § 319.37–10. As in other sections, we would change all references to "restricted articles" to "plants for planting." We would change a reference in paragraph (c) of § 319.37–10 to a "shipment" of plants for planting to a "consignment," to be consistent with changes discussed earlier.

Paragraphs (a) and (b) of § 319.37–10 address importation by any means other than mail and by mail, respectively. Each requires that imported plants be accompanied by, among other information, the number of the written permit authorizing the importation, if one was issued. We are proposing to require instead that the number of the written permit authorizing the importation be included if a written permit was required under proposed § 319.37–5. This change would clarify that all articles required to be accompanied by a permit must be marked with that permit number.

Ports of Entry: Approved Ports, Notification of Arrival, Inspection, and Refusal of Entry

Information about approved ports of entry, notification of arrival at the port of entry, inspection, and refusal of entry is currently spread among multiple sections in the regulations. We are proposing to consolidate this information into a new § 319.37–8 to make the regulations easier to use.

Paragraph (a) of proposed § 319.37–8 would describe approved ports of entry for imported plants for planting. This information would be taken from the introductory text of § 319.37–14. The proposed text would state that any plants for planting required to be imported under a written permit pursuant to proposed § 319.37–5(a), if not precleared, may be imported or offered for importation only at a USDA plant inspection station.

Current § 319.37–14 also contains a list of USDA plant inspection stations. We are proposing to remove this list from the regulations and add it to the Plants for Planting Manual. Our decision to establish a USDA plant inspection station at a port of entry is based on the demand for inspection and the available facilities; public input on adding or removing USDA plant inspection stations would not be constructive, and in fact past additions to the list of USDA plant inspection stations have not received any public comment. Accordingly, as part of moving the introductory text of § 319.37–14 into proposed § 319.37–8(a), we would amend that text to indicate the USDA plant inspection stations are listed in the Plants for Planting Manual. The other provisions would remain unchanged, except to change from "restricted articles" to "plants for planting."

Plants for planting that are not required to be imported under a written permit pursuant to § 319.37–5(a) would be allowed to be imported or offered for importation at any Customs designated port of entry. Exceptions, if any, would be listed in § 330.104. Plants for planting that are required to be imported under a written permit that are also precleared in the country of export would not be required to enter at an inspection station and may enter through any Customs port of entry. Exceptions, if any, would be listed in § 330.104. These provisions are unchanged from current § 319.37–14.

Paragraph (b) of proposed § 319.37–8 would include the information in current § 319.37–11 regarding notice of arrival. It would state that, promptly upon arrival of any plants for planting at a port of entry, the importer shall notify PPQ of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

Paragraph (c) of proposed § 319.37–8 would include the provisions currently in § 319.37–4(b) regarding inspection and treatment. It would state that any plants for planting may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the plants for planting were grown, and must undergo treatment in accordance with 7 CFR part 305 if treatment is ordered by the inspector. (The regulations currently state that plants for planting must undergo any treatment contained in the phytosanitary treatment regulations in 7 CFR part 305 that is ordered by the inspector, but part 305 no longer contains treatments; instead, it contains general requirements for performing treatments, while specific treatments are found in the PPQ Treatment Manual.) Any plants for planting found upon inspection to contain or be contaminated with quarantine pests that cannot be eliminated by treatment would be denied entry at the first United States port of arrival and would

have to be destroyed or shipped to a point outside the United States.

Paragraphs (d) and (e) of proposed § 319.37–8 would include the provisions currently in § 319.37(b) and (c). Under paragraph (d), the importer of any plants for planting denied entry for noncompliance with the regulations would have to, at the importer's expense and within the time specified in an emergency action notification (PPQ Form 523), destroy, ship to a point outside the United States, treat in accordance with 7 CFR part 305, or apply other safeguards to the plants for planting, as prescribed by an inspector, to prevent the introduction into the United States of quarantine pests. In choosing which action to order and in setting the time limit for the action, the inspector would consider the degree of pest risk presented by the plant pest associated with the plants for planting, whether the plants for planting are a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the plants for planting.

As described, the regulations governing the handling of articles that are inspected and found to require treatment are slightly different from the regulations governing the handling of articles that are denied entry for noncompliance with the regulations. We are proposing to retain the two sets of provisions, but we are considering harmonizing them in the future.

Under paragraph (e) of proposed § 319.37–8, which is drawn from current § 319.37(c), no person would be allowed to remove any plants for planting from the port of first arrival unless and until notice is given to the collector of customs by the inspector that the plants for planting has satisfied all requirements of the regulations.

Treatment of Plants for Planting: Costs and Charges for Inspection and Treatment; Treatments Applied Outside the United States

Proposed § 319.37–9 would include various provisions of the current regulations that deal with treatments. These provisions are mostly taken from current § 319.37–13.

Paragraph (a) of proposed § 319.37–9 is drawn from current paragraph (a) of § 319.37–13. It would state that the services of a Plant Protection and Quarantine inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer. No charge would be made to the importer for Government-owned or -controlled special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies required in handling an importation. PPQ would not be responsible for any costs or charges, other than those indicated in proposed § 319.37–9.

Most of paragraph (b) of proposed § 319.37–9 is drawn from current paragraph (b) of § 319.37–9, but the first sentence of proposed paragraph (b) incorporates a requirement currently found in § 319.37–6(b). That paragraph requires seeds and bulbs treated within the United States to be treated at the time of importation into the United States. Among the various types of plants for planting, only seeds and bulbs are routinely subjected to phytosanitary treatment, as treatments typically cause significant mortality in other types of plants for planting. However, our policy has been to require treatment at the time of importation for any plants for planting that require treatment, not just seeds and bulbs, since the movement of potentially infested plants for planting within the United States could be a pathway for the introduction of quarantine pests. To promote clarity, we would amend proposed paragraph (b) to indicate that any treatment performed in the United States on plants for planting must be performed at the time of importation into the United States, not just treatments on seeds and bulbs.

Paragraph (b) would also indicate that treatment would be performed by an inspector or under an inspector's supervision at a government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at nongovernment expense under the supervision of an inspector and in accordance with 7 CFR part 305 and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any quarantine pests. However, treatment could be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, the plants for planting can be transported to such nongovernmental facility without the risk of introduction into the United States of quarantine pests.

Paragraph (c) of proposed § 319.37–9 would be drawn from current paragraph (c) of § 319.37–13. It would require any treatment performed outside the United States to be monitored and certified by an APHIS inspector or an official from the NPPO of the exporting country. If monitored and certified by an official of the NPPO of the exporting country, then a phytosanitary certificate would have to be issued with the following declaration: "The consignment of (fill in taxon) has been treated in accordance with 7 CFR part 305." (We are proposing to replace the term "botanical name" in the current text with the term "taxon.") During the entire interval between treatment and export, the consignment would have to be stored and handled in a manner that prevents any infestation by quarantine pests.

Growing Media

Proposed § 319.37–10 would set out requirements with respect to the importation of plants for planting in growing media. It would be based on current § 319.37–8, but we would revise the current regulations to reflect the removal of restrictions on the importation of specific types of plants for planting from the regulations and to add a notice-based process for updating the list of approved growing media.

Paragraph (a) of proposed § 319.37–10 would require plants for planting at the time of importation or offer for importation into the United States to be free of sand, soil, earth, and other growing media, except as provided in the remainder of the section.

Paragraph (b) of § 319.37–8 currently states that a restricted article from Canada may be imported in any growing medium, except that a restricted article from Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road may only be imported in an approved growing medium if the phytosanitary certificate accompanying it contains an additional declaration that that the plants were grown in a manner to prevent infestation by potato cyst nematodes. Articles imported from Canada are generally exempt from the prohibition on importation with growing media because the pest risks in the United States and Canada are similar.

We are proposing to revise this paragraph to remove the specific restrictions on plants for planting grown in certain areas in Canada. Instead, proposed paragraph (b) would state that plants for planting from Canada may be imported in any growing medium, except as restricted in the Plants for Planting Manual. Restrictions on growing media for specific types of plants for planting imported from Canada would be added, changed, or removed in accordance with proposed § 319.37–20. Using the notice-based process to update these restrictions

would provide flexibility and allow us to respond to changing pest conditions more quickly.

Paragraph (c) of § 319.37–8 allows a restricted article growing solely in agar or in other agar-like tissue culture medium to be imported established in such growing media. Paragraph (d) allows epiphytic plants (including orchid plants) established solely on tree fern slabs, coconut husks, coconut fiber, new clay pots, or new wooden baskets to be imported on such growing media. New wooden baskets must meet all applicable requirements in §§ 319.40–1 through 319.40–11, which contain requirements for the importation of wood.

We are proposing to remove these specific requirements and instead generally provide, in proposed paragraph (c), that certain types of plants for planting growing solely in certain growing media listed in the Plants for Planting Manual may be imported established in such growing media. We would state that the Administrator has determined that the importation of the specified types of plants for planting in these growing media does not pose a risk of introducing quarantine pests into the United States, thus communicating the condition for allowing types of plants for planting to be imported in growing media without further restrictions.

Proposed paragraph (c) would also provide that, if we determine that a new growing medium may be added to the list of growing media in which imported plants for planting may be established, or that a growing medium currently listed for such purposes is no longer suitable for establishment of imported plants for planting, we will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. In our notice, we will provide for a public comment period, typically 60 days. After the close of the comment period, we will publish another notice informing the public regarding our decision on the change to the list of growing media in which imported types of plants for planting may be established. Establishing this process would allow us to quickly approve growing media or revoke their approval, depending on changing scientific information.

Paragraph (e) of § 319.37–8 lists several taxa of plants for planting that may be imported in certain approved growing media subject to conditions designed to prevent their infestation with quarantine pests. We are proposing to remove these specific requirements from the regulations. In their place, proposed paragraph (d) would state that certain types of plants for planting, as listed in the Plants for Planting Manual, may be imported when they are established in a growing medium approved by the Administrator and they are produced in accordance with additional requirements specified in the Plants for Planting Manual. (In addition to changing the provisions currently in paragraph (e), this would also allow for changes to the lists of plants for planting allowed to be imported in approved growing media that are currently found in paragraphs (c) and (d) of § 319.37–8.) Changes to the list of plants for planting that may be imported in growing media, and to the requirements for the importation of those plants for planting, would be made in accordance with § 319.37–20.

Packing and Approved Packing Material

Proposed § 319.37–11 would set out requirements for packing imported plants for planting and for their importation in packing material. Packing material is distinguished from growing media in that the plant is not rooted in packing material and the plant's roots are easily removed from packing material for inspection. This proposed section incorporates requirements from current §§ 319.37–9 and 319.37–12.

Paragraph (a) of proposed § 319.37–11 would indicate that plants for planting for importation into the United States must not be packed in the same container as plants for planting whose importation into the United States is NAPPRA in accordance with proposed § 319.37–4. Currently, § 319.37–12 prohibits restricted articles from being imported into the United States in the same container as prohibited articles; we propose to update this section to use the terminology established elsewhere in this proposal.

Paragraph (b) of proposed § 319.37–11 would be based on current § 319.37–9, which contains a list of approved packing materials. However, we would remove the list of approved packing materials from the regulations. Instead, proposed paragraph (b) would provide that any plants for planting at the time of importation or offer for importation into the United States shall not be packed in a packing material unless the plants were packed in the packing material immediately prior to shipment; such packing material is free from sand, soil, or earth (except as designated in the Plants for Planting Manual); has not been used previously as packing material or otherwise; and is approved by the Administrator as not posing a risk of introducing quarantine pests. Approved packing materials (and the sand that can be found on approved packing material) would be listed in the Plants for Planting Manual. There is a great diversity of packing materials that do not support the development of quarantine pests; allowing the Administrator to approve such packing material, rather than going through the rulemaking process to list new packing material in the regulations, will make it easier for importers to use newly available, risk-free packing materials.

Paragraph (c) of proposed § 319.37–11 would set out our process for changing the list of approved packing materials. Similar to the process for changing the list of approved growing media, proposed paragraph (c) would provide that, if we determine that a new packing material may be added to the list of approved packing materials, or that a packing material currently listed should no longer be approved, we will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. In our notice, we will provide for a public comment period, typically of 60 days. After the close of the comment period, we will publish another notice informing the public regarding our decision on the change to the list of approved packing materials in which imported types of plants for planting may be established. Establishing this process would allow us to quickly approve packing materials or revoke their approval, depending on changing scientific information.

Integrated Pest Risk Management Measures

We have already discussed proposed § 319.37–20, which would set out the process for adding, changing, or removing restrictions on the importation of specific types of plants for planting. We are proposing to include in our revised regulations three sections that would set out procedures for certain plant type-specific restrictions.

Proposed § 319.37–21 would set out general requirements for the development of integrated pest risk management measures, when we determine that such measures are necessary to mitigate the risk associated with the importation of a specific type of plants for planting. We currently have several programs in the regulations that use integrated pest risk management measures in order to ensure that specific types of plants for planting are imported free of a quarantine pest or pests. The program in § 319.37–5(r) for the importation of *Pelargonium* spp. and *Solanum* spp. from areas where *R. solanacearum* race 3 biovar 2 is present

is one example. It incorporates requirements for ongoing testing for that pathogen, construction of production sites to prevent the pathogen from entering from outside sources such as water or workers' clothing, disinfection of equipment used in the production site, ensuring that growing media is free of the pathogen, training of production site personnel, remedial measures in case the pathogen is detected, and phytosanitary certification.

An example of a program focused on an insect pest is the program in § 319.37–5(v) for the importation of plants for planting from Israel, which is designed to prevent the introduction of *Spodoptera littoralis* and other quarantine pests. This program includes requirements for registration of production sites, construction of production sites to prevent the introduction of *S. littoralis*, regular inspections for the pest, remedial measures in case the pest is detected, and phytosanitary certification.

Although we are proposing to move the requirements for these specific programs from the regulations to the Plants for Planting Manual, we believe it will benefit stakeholders and other interested parties to see what general provisions we would use to develop such programs in the future. The provisions we are proposing to include in § 319 37–21 are based on Regional Standard for Phytosanitary Measures (RSPM) No. 24 [6] of the North American Plant Protection Organization, of which APHIS is a member, and are consistent with the IPPC's ISPM No. 36; both of these standards address plants for planting.

In the past, we have referred to these programs as "systems approaches." We are proposing to use the term "integrated pest risk management measures" in the plants for planting regulations to be consistent with RSPM No. 24 and industry terminology and to emphasize the fact that such programs involve multiple measures, each of which is necessary for a comprehensive approach to managing pest risk.

The introductory text of proposed § 319.37–21 would indicate that, if a type of plants for planting is a host of a quarantine pest or pests, APHIS may require the type to be produced in accordance with integrated pest risk management measures as a condition of importation. Proposed § 319.37–21 would set out a general framework for integrated pest risk management measures.

When appropriate, we would require a type of plants for planting to be imported subject to integrated pest risk management measures that mitigate the quarantine pest risks associated with that type of plants for planting through the process described in § 319.37–20. In the documentation accompanying the notice we would publish under § 319.37–20, we would specify the quarantine pests identified and the specific measures we would use to manage them. Those measures would be consistent with the general measures described in proposed § 319.37–21, but would be targeted to the identified quarantine pests.

The NAPPO standard and our proposed regulations describe the responsibilities of all parties involved in integrated pest risk management measures: The place of production, the NPPO of the exporting country, plant brokers, and the NPPO of the importing country (i.e., APHIS). We are not proposing to include most of the information in RSPM No. 24 with respect to our responsibilities, as it is not necessary to specify the actions we will take in the regulations. However, the proposed regulations provide us with the authority to take any action we may deem to be necessary. As a practical matter, we concur with RSPM No. 24 and would take action in accordance with its principles when developing and implementing integrated pest risk management measures.

Paragraph (a) of proposed § 319.37–21 would discuss the responsibilities of the place of production. RSPM No. 24 uses "place of production" as that term is defined in the IPPC Glossary. Accordingly, we would add to the regulations a definition of *place of production*, which would be consistent with the definition of that term in the IPPC Glossary. The definition would read: "Any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes."

The introductory text of paragraph (a) would indicate that, for integrated pest risk management measures, the place of production would be responsible for identifying, developing, and implementing procedures that meet the requirements of both the NPPO of the exporting country and APHIS. Participants in the export program would have to be approved by the NPPO or its designee and APHIS. Approval would be conferred by the NPPO or its designee and APHIS after the participant meets the conditions required for integrated pest risk management. Approval would be withdrawn if the participant fails to meet the conditions at any time. All documentation required under paragraph (a)(5) of proposed § 319.37–21 would be maintained by the exporting place of production and made available to official representatives of the NPPO of the exporting country and APHIS upon request. The place of production would have to be open to necessary and reasonable audit, monitoring, and evaluation of compliance by the NPPO of the exporting country and APHIS. The management of the place of production would be responsible for complying with the integrated pest risk management measures. Management would have to specify the roles and responsibilities of its personnel to perform program activities. The place of production would have to notify the NPPO of the exporting country of deficiencies detected during internal audits. The NPPO of the exporting country would be responsible for ensuring that the place of production is in compliance with the integrated pest risk management measures. These requirements are all necessary to properly establish accountability for the successful implementation of integrated pest risk management measures by the place of production.

The most important requirement for the place of production is its program to manage pests. Under proposed paragraph (a)(1), the place of production would have to develop and implement an approved pest management program that contains ongoing pest monitoring and procedures for the exclusion and control of plant pests. The place of production would have to obtain material used to produce plants for planting from sources that are free of quarantine pests and that are approved by the NPPO of the exporting country and APHIS. All sources of plants for planting and the phytosanitary status of those plants would have to be well-documented, and the program for producing plants for planting would have to be carefully monitored.

Under proposed paragraph (a)(2), a training program approved by the NPPO of the exporting country and APHIS would have to be established, documented, and regularly conducted at the place of production. The training program would have to ensure that all those involved in the export program possess specific knowledge related to the relevant components of the program and a general understanding of its requirements. This requirement would ensure that the pest management program is properly implemented.

[6] Available at *http://www.nappo.org/en/data/files/download/PDF/RSPM24-16-10-05-e.pdf.*

To ensure that the pest management program is effective, proposed paragraph (a)(3) would require the place of production to perform, or designate parties to perform internal audits that ensure that a plan approved and documented by APHIS and the NPPO of the exporting country is being followed and is achieving the appropriate level of pest management.

Proposed paragraph (a)(4) would require the place of production to implement a procedure approved by APHIS and the NPPO of the exporting country or its designee that documents and identifies plants from propagation through harvest and sale to ensure that plants can be traced forward and back from the place of production. The system would at a minimum have to account for:

- The origin and pest status of mother stock. To clarify the meaning of this term, we would define *mother stock* in § 319.37–2 as a group of plants from which plant parts are taken to produce new plants;
- The year of propagation and the place of production of all plant parts that make up the plants for planting intended for export;
- Geographic location of the place of production;
- Location of plants for planting within the place of production;
- The plant taxon; and
- The purchaser's identity.

This requirement would ensure that, in the event of a pest problem, all responsible parties could quickly identify the source and potential distribution of the problem.

To ensure a common understanding of the integrated measures, under proposed paragraph (a)(5), the place of production would be required to develop a manual approved by the NPPO of the exporting country and APHIS that guides the place of production's operation and that includes the following components:

- Administrative procedures (including roles and responsibilities and training procedures);
- Pest management plan;
- Place of production internal audit procedures;
- Management of noncompliant product or procedures;
- Traceability procedures; and
- Recordkeeping systems.

Proposed paragraph (a)(6) would require the place of production to maintain records on its premises as specified by APHIS and the NPPO of the exporting country. These records would have to be made available to APHIS and the NPPO of the exporting country upon request. These documents would include all the elements described in proposed paragraph (a) and copies of all internal and external audit documents and reports.

Proposed paragraph (b) would describe the joint responsibilities of APHIS and the NPPO of the exporting country. Under this paragraph, APHIS and the NPPO of the exporting country would be responsible for collaborating to establish program requirements, including workplans and compliance agreements as necessary, for recognizing and implementing particular import programs. Technically justified modifications to the program would be negotiated. The administration of program requirements would include such elements as clarification of terminology, testing and retesting requirements, eligibility, the nomenclature of certification levels, horticultural management, isolation and sanitation requirements, inspection, documentation, identification and labeling, quality assurance, noncompliance and remedial measures, and postentry quarantine requirements. The criteria for approving, suspending, removing, and reinstating approval for a particular program would be jointly developed and agreed upon by APHIS and the NPPO of the exporting country. Information would be exchanged between APHIS and the NPPO of the exporting country through officially designated contact points.

Proposed paragraph (c) would describe the responsibilities of the NPPO of the exporting country. Paragraph (c)(1) would require the NPPO of the exporting country to provide sufficient information to APHIS to support the evaluation and acceptance of export programs. This could include:

- Specific identification of the commodity, place of production, and expected volume and frequency of consignments;
- Relevant production, harvest, packing, handling, and transport details;
- Pests associated with the plant including prevalence, distribution, and damage potential;
- Risk management measures proposed for a pest management program; and
- Relevant efficacy data.

Proposed paragraph (c)(2) would require a phytosanitary certificate to be issued by the NPPO of the exporting country unless APHIS and the NPPO of the exporting country agree to use other documentation in accordance with proposed § 319.37–6(c).

Under proposed paragraph (c)(3), other responsibilities of the NPPO of the exporting country would include:

- Establishing and maintaining compliance agreements as necessary;
- Oversight and enforcement of program provisions;
- Arrangements for monitoring and audit; and
- Maintaining appropriate records.

Paragraph (d) of proposed § 319.37–21 would address the responsibilities of plant brokers. Persons trading in plants for planting intended for export without growing the plants (referred to as plant brokers) would have to be approved by the NPPO of the exporting country or its designee. The list of plant brokers would have to be provided to APHIS upon request. Approval would only be conferred by the NPPO or its designee after the participant meets the requirements of proposed paragraph (d). Approval would have to be withdrawn if the participant fails to meet the conditions at any time. Plant brokers would have to ensure the traceability of export consignments to an approved place of production or production site. Brokers would have to maintain the phytosanitary status of the plants in a manner equivalent to an approved place of production from purchase, storage, and transportation to the export destination. Plant brokers would have to document these processes for verifying status and maintaining traceability.

Paragraph (e) of proposed § 319.37–21 would set out requirements for external audits. APHIS and the NPPO of the exporting country would agree to the requirements for auditing.

Under proposed paragraph (e)(1), APHIS would evaluate the integrated pest risk management measures of the NPPO of the exporting country before acceptance. This could consist of documentation review, site visits, and inspection and testing of plants produced under the system. Following approval, APHIS or its designee would monitor and periodically audit the system to ensure that it continues to meet the stated objectives. Audits would include inspection of imported plants for planting, site visits, and review of the integrated pest risk management measures and internal audit processes of the place of production and the NPPO of the exporting country.

Under proposed paragraph (e)(2), the NPPO of the exporting country would arrange for audits of the exporting system. Audits would be conducted by the NPPO or its designee and may consist of inspection and testing of plants for planting and the documentation and management practices as they relate to the program. Audits would verify that:

- The places of production in the program are free of quarantine pests;

• Program participants are complying with the specified standards;

• The integrated pest management measures continue to meet APHIS requirements; and

• Arrangements with designees are complied with.

Paragraph (f) of proposed § 319.37–21 would set out procedures in case of noncompliance. Proposed paragraph (f)(1) would require the exporting NPPO to notify APHIS of noncompliance within the integrity of the system or noncompliance by a place of production that affects the phytosanitary integrity of the plants for planting. The requirements for notification would be determined between the NPPO of the exporting country and APHIS.

Proposed paragraph (f)(2) would indicate that regulatory responses to program failures would be based on existing bilateral agreements. Contingency plans could be established in advance to ensure that alternative measures are available in the event that all or part of a program fails. APHIS would specify the consequences of noncompliance to the NPPO of the exporting country. The NPPO would have to specify the consequences of noncompliance to the participants in the program. These could vary depending on the nature and severity of the infraction. In addition, remedial measures would be specified to enable a suspended or decertified place of production or plant broker to become eligible for reinstatement or recertification.

Proposed paragraph (f)(3) would require places of production or plant brokers that do not meet the conditions of the program to be suspended. Plants for planting could not be exported from a place of production or a plant broker that has failed to meet the program requirements.

Proposed paragraph (f)(4) would require the effectiveness of remedial measures taken to be verified before reinstatement to the program by the exporting NPPO, and where appropriate, by APHIS.

As can be seen, the requirements in proposed § 319.37–21 are general requirements that could be adapted to any quarantine pests and any measures used to control or exclude them from places of production. They would provide a comprehensive framework for the development of specific requirements. We invite public comment on whether other aspects of implementing integrated pest risk management measures should be included in the regulations.

Trust Fund Agreements

Some of the tasks undertaken in support of integrated pest risk management measures would require APHIS to perform phytosanitary services (for example, audits) in the exporting country. To ensure that APHIS is properly reimbursed for its services, proposed § 319.37–22 would provide for the creation of trust funds in order to fund such activities, similar to those currently required in paragraphs (r)(3)(xv) and (v)(7) of § 319.37–5.

Under proposed § 319.37–22, if APHIS personnel need to be physically present in an exporting country or region to facilitate the exportation of plants for planting and APHIS services are to be funded by the NPPO of the exporting country or a private export group, then the NPPO or the private export group would have to enter into a trust fund agreement with APHIS that is in effect at the time APHIS' services are needed. Under the agreement, the NPPO of the exporting country or the private export group would be required to pay in advance all estimated costs that APHIS expects to incur in providing inspection services in the exporting country. These costs would include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing services. The agreement would require the NPPO of the exporting country or region or a private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. The agreement would have to specify that, if the deposit is not sufficient to meet all costs incurred by APHIS, the NPPO of the exporting country or a private export group must deposit with APHIS, before the services will be completed, a certified or cashier's check for the amount of the remaining costs, as determined by APHIS. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO of the exporting country or region or a private export group, or held on account.

Postentry Quarantine

Proposed § 319.37–23 would contain requirements for postentry quarantine. Under current § 319.37–7, certain taxa of plants for planting are required to be grown in postentry quarantine in order to determine whether they are infested with quarantine pests, typically pathogens. Section 319.37–7 also provides a framework of requirements under which postentry quarantine must be conducted and completed. We would move the lists of taxa that must be grown in postentry quarantine that are currently found in paragraphs (a) and (b) of § 319.37–7 to the Plants for Planting Manual. However, we would retain much of the framework in the regulations, since it is generally applicable to growing plants for planting in postentry quarantine.

Paragraph (a) of proposed § 319.37–23 would contain the requirements currently in the introductory text of paragraph (a) of § 319.37–7, before the table of restricted articles for which postentry quarantine is required. The paragraph would explain that one specific restriction that may be placed upon the importation of a type of plants for planting in accordance with proposed § 319.37–20 is that it be grown in postentry quarantine. Plants for planting grown in postentry quarantine could be grown under postentry quarantine conditions specified in paragraphs (c) and (d) of proposed § 319.37–23, and could be imported or offered for importation into the United States only:

• If destined for a State that has completed a State postentry quarantine agreement with APHIS;

• If an importer postentry quarantine growing agreement has been completed and submitted to PPQ. (This agreement is currently referred to simply as a "postentry quarantine agreement," but we believe specifying that it is the importer's agreement would better differentiate it from the State postentry quarantine agreement.) The agreement would have to be signed by the person (the importer) applying for a written permit for importation of the plants for planting in accordance with proposed § 319.37–5; and,

• If PPQ has determined that the completed postentry quarantine growing agreement fulfills the applicable requirements of proposed § 319.37–23 and that services by State inspectors are available to monitor and enforce the postentry quarantine.

Paragraph (b) of proposed § 319.37–23 would set out requirements for State postentry quarantine agreements. Such requirements are currently found in paragraph (c) of § 319.37–7. We believe that there is no need to retain the level of detail regarding such agreements that is found in current paragraph (c), which sets out extensive requirements that States must meet in order to be sites for postentry quarantine; for example, the paragraph includes detailed requirements for State laws and

regulations, duties of State inspectors, services APHIS agrees to provide, and provisions for termination of a State postentry quarantine agreement. Current paragraph (c) also lists the States with active State postentry quarantine agreements.

Although we continue to believe that all these requirements are necessary, we believe they would be better addressed in the agreement itself, rather than detailed in the regulations. This would allow us to tailor State postentry quarantine agreements to specific circumstances and to simplify the regulations. Accordingly, proposed paragraph (b) would state only that plants for planting required to undergo postentry quarantine in accordance with proposed § 319.37–23 may only be imported if destined for postentry quarantine growing in a State which has entered into a written agreement with APHIS, signed by the Administrator or his or her designee and by the State Plant Regulatory Official (SPRO). Proposed paragraph (b) would note that, in accordance with the laws of individual States, inspection and other postentry quarantine services provided by a State may be subject to charges imposed by the State.

Rather than include the list of States that have entered into a postentry quarantine agreement in the regulations, we would provide such a list of States in the Plants for Planting Manual. This would allow us to quickly update the list if changes are necessary, providing up-to-date information to stakeholders. The list of States with a postentry quarantine agreement (all U.S. States and Territories, except the District of Columbia, Guam, Hawaii, Kansas, and the Northern Mariana Islands) would not change; it would simply be moved to the manual.

Proposed paragraph (c) of § 319.37–23 would contain requirements for importer postentry quarantine growing agreements. Such requirements are currently found in paragraph (d) of § 319.37–7. Similar to the requirements for State postentry quarantine agreements, we would simplify the requirements currently found in § 319.37–7(d) in proposed paragraph (c). Proposed paragraph (c) would require that any plants for planting required to be grown under postentry quarantine conditions, as well as any increase therefrom, be grown in accordance with an importer postentry quarantine growing agreement signed by the person (the importer) applying for a written permit in accordance with § 319.37–5 for importation of the plants for planting and submitted to PPQ. On each importer postentry quarantine growing agreement, the person would also have to obtain the signature of the SPRO for the State in which plants for planting covered by the agreement will be grown. (Currently, APHIS is required to obtain the signature of the SPRO; however, in practice, we have required the person obtaining the permit to obtain the SPRO's signature, and it is appropriate to require that the person seeking to grow plants in postentry quarantine obtain the necessary approvals to do so. Therefore, we are proposing to update the regulations to match current practice.)

The importer postentry quarantine growing agreement would specify the kind, number, and origin of plants to be imported; the conditions specified in the Plants for Planting Manual under which the plants for planting will be grown, maintained, and labeled; and the reporting requirements in the case of abnormal or dead plants for planting. The agreement would certify to APHIS and to the State in which the plants for planting are grown that the signer of the agreement will comply with the conditions of the agreement for the postentry quarantine growing period prescribed for the type of plants for planting in the Plants for Planting Manual. (The standard postentry quarantine growing period, as described in current paragraph (d)(7), is 2 years, but some taxa are grown for other periods; we would move all these requirements to the Plants for Planting Manual.)

All these elements of the postentry quarantine growing agreement are described in more detail in current § 319.37–7(d); retaining less detailed performance standards in proposed § 319.37–23(c) would allow us to tailor postentry quarantine growing agreements to specific circumstances and to simplify the regulations.

Paragraph (d) of proposed § 319.37–23 would specify how to apply for permits. A completed importer postentry quarantine agreement would have to accompany the application for a written permit for plants for planting required to be grown under postentry quarantine conditions. Importer postentry quarantine agreement forms would be available without charge from APHIS, PPQ, Permit Unit, 4700 River Road Unit 136, Riverdale, Maryland 20737–1236 or on the Internet at *http://www.aphis.usda.gov/permits/ppq_epermits.shtml*. We are proposing to update the address for importer postentry quarantine agreement forms and add a Web address for convenience.

Paragraph (e) of proposed § 319.37–23 would address inspector-ordered disposal, movement, or safeguarding of plants for planting, costs and charges, and civil and criminal liabilities. It would be taken unchanged from current paragraph (f) of § 319.37–7.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

While nearly all importers of plants for planting that would be directly affected by the proposed rule are small, APHIS believes it unlikely that any economic impacts would be significant, including instances in which phytosanitary certification would be newly required. The proposed changes would facilitate access to information on import restrictions for specific types of plants for planting, and create a more efficient process for amending import requirements.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 340

Administrative practice and procedure, Biotechnology, Genetic engineering, Imports, Packaging and containers, Plant diseases and pests, Transportation.

Accordingly, we propose to amend 7 CFR parts 319 and 340 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.8 is amended as follows:

■ a. By redesignating paragraph (b) as paragraph (c).

■ b. By adding a new paragraph (b) to read as set forth below.

§ 319.8 Notice of quarantine.

* * * * *

(b) The importation of cotton plants (including any plant parts) that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting" of this part.

* * * * *

§ 319.8–1 [Amended]

■ 3. In § 319.8–1, the definition of *cottonseed* is amended by adding the words "and that is intended for processing or consumption" before the period.

■ 4. Section 319.15 is amended as follows:

■ a. By redesignating paragraph (b) as paragraph (c).

■ b. By adding a new paragraph (b) to read as set forth below.

§ 319.15 Notice of quarantine.

* * * * *

(b) The importation of sugarcane plants (including any plant parts) that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting" of this part.

* * * * *

Subpart—Citrus Canker and Other Citrus Diseases [Removed]

■ 5. Subpart—Citrus Canker and Other Citrus Diseases, consisting of § 319.19, is removed.

■ 6. Section 319.24 is amended as follows:

■ a. By redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively.

■ b. By adding a new paragraph (b) to read as set forth below.

§ 319.24 Notice of quarantine.

* * * * *

(b) The importation of corn plants (including any plant parts) that are for planting or capable of being planted is restricted in "Subpart—Plants for Planting" of this part.

* * * * *

■ 7. Subpart—Plants for Planting, §§ 319.37 through 319.37–14, is revised to read as follows:

Subpart—Plants for Planting

Sec.

Subpart—Plants for Planting

§ 319.37–1 Notice of quarantine.

(a) Under section 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

(b) The Secretary has determined that it is necessary to designate the importation of certain taxa of plants for planting as not authorized pending pest risk analysis, as provided in § 319.37–4. The Secretary has determined that it is necessary to restrict the importation into the United States of all other plants for planting and to impose additional restrictions on the importation of specific types of plants for planting, in accordance with this subpart and as described in the Plants for Planting Manual.

(c) The importation of plants that are imported for processing, as determined by an inspector based on documentation accompanying the articles, is not subject to this subpart.

(d) The importation of taxa of plants for planting that are listed in parts 360 and 361 of this chapter is subject to the restrictions in those parts.

(e) The Plant Protection and Quarantine Programs also enforces regulations promulgated under the Endangered Species Act of 1973 (16 U.S.C. 1531–1544) which contain additional prohibitions and restrictions on importation into the United States of plants for planting subject to this subpart (see 50 CFR parts 17 and 23).

(f) One or more common names of plants for planting are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the plants for planting represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all plants for planting within the taxon represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name. When restrictions apply to the importation of a taxon of plants for planting for which there are taxonomic synonyms, those restrictions apply to the importation of all the synonyms of that taxon as well.

§ 319.37–2 Definitions.

The following definitions apply to this subpart:

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other employee of the United States Department of Agriculture authorized to act in his or her stead.

Bulb. The portion of a plant commonly known as a bulb, bulbil, bulblet, corm, cormel, rhizome, tuber, or pip, and including fleshy roots or other underground fleshy growths, a unit of which produces an individual plant.

Consignment. A quantity of plants for planting being moved from one country to another and covered, when required, by a single phytosanitary certificate (a

consignment may be composed of one or more lots or taxa).

Earth. The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

From. Plants for planting are considered to be "from" any country or locality in which it was grown. *Provided,* That plants for planting imported into Canada from another country or locality shall be considered as being solely from Canada if they meet the following conditions:

(1) They are imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

(2) They have never been grown in a country from which their importation would not be authorized pending pest risk analysis under § 319.37–4,

(3) They have never been grown in a country other than Canada from which it would be subject to certain restrictions on the importation of specific types of plants for planting under § 319.37–20, which are listed in the Plants for Planting Manual; *Provided,* that plants for planting that would be subject to postentry quarantine if imported into the United States may be imported from Canada after growth in another country if they were grown in Canada in postentry quarantine under conditions equivalent to those specified in the Plants for Planting Manual, and

(4) They were not imported into Canada in growing media.

Inspector. Any individual authorized by the Administrator or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Lot. A number of units of a single commodity, identifiable by its homogeneity of composition and origin, forming all or part of a consignment.

Mother stock. A group of plants from which plant parts are taken to produce new plants.

National plant protection organization (NPPO). The official service established by a government to discharge the functions specified by the International Plant Protection Convention.

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including plants for planting or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

Official control. The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Phytosanitary certificate. A document relating to a consignment of plants for planting, which is issued by an official of the NPPO of the country in which the plants for planting were grown, which is issued not more than 15 days prior to shipment of the plants for planting from the country in which grown, which is addressed to the NPPO of the United States (Plant Protection and Quarantine Programs), which contains a description of the plants for planting intended to be imported into the United States, which certifies that the plant has been thoroughly inspected, is believed to be free from quarantine pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required in accordance with § 319.37–20 and specified in the Plants for Planting Manual.

Place of production. Any premises or collection of fields operated as a single production or farming unit. This may include a production site that is separately managed for phytosanitary purposes.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles.

Plant Protection and Quarantine Programs. The organizational unit with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*) and related legislation, quarantines, and regulations.

Plants for planting. Regulated plants (including any plant parts) that are for planting or capable of being planted.

Plants for Planting Manual. The document that contains restrictions on the importation of specific types of plants for planting, as provided in § 319.37–20, and other information about the importation of plants for planting as provided in this subpart. The Plants for Planting Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 133, Riverdale, MD 20737–1236.

Planting. Any operation for the placing of plants in a growing medium, or by grafting or similar operations, to ensure their subsequent growth, reproduction, or propagation.

Port of first arrival. The land area (such as a seaport, airport, or land border station) where a person, or a land, water, or air vehicle, first arrives after entering the territory of the United States, and where inspection of plants for planting is carried out by inspectors.

Preclearance. Phytosanitary inspection and/or clearance in the country in which the plants for planting were grown, performed by or under the regular supervision of APHIS.

Production site. A defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, greenhouse, screenhouse, or premises.

Quarantine pest. A plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

Regulated plant. A vascular or nonvascular plant. Vascular plants include gymnosperms, angiosperms, ferns, and fern allies. Gymnosperms include cycads, conifers, and gingko. Angiosperms include any flowering plant. Fern allies include club mosses, horsetails, whisk ferns, spike mosses, and quillworts. Nonvascular plants include mosses, liverworts, hornworts, and green algae.

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his/her stead has been or may hereafter be delegated.

Soil. The loose surface material of the earth in which plants, trees, and shrubs

grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

Species (spp.). All species, clones, cultivars, strains, varieties, and hybrids of a genus.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

State Plant Regulatory Official. The official authorized by the State to sign agreements with Federal agencies involving operations of the State plant protection agency.

Taxon (taxa). Any grouping within botanical nomenclature, such as family, genus, species, or cultivar.

Type of plants for planting. A grouping of plants for planting based on shared characteristics such as biological traits, morphology, botanical nomenclature, or risk factors.

United States. All of the States.

§ 319.37–3 General restrictions on the importation of plants for planting.

(a) The importation of certain taxa of plants for planting is not authorized pending pest risk analysis in accordance with § 319.37–4.

(b) General restrictions that apply to the importation of all plants for planting other than those whose importation is not authorized pending pest risk analysis are found in §§ 319.37–5 through 319.37–11.

(c) In accordance with § 319.37–20, the Administrator may impose restrictions on the importation of specific types of plants for planting. These restrictions are listed in the Plants for Planting Manual. Additional information on certain restrictions on the importation of specific types of plants for planting can be found in §§ 319.37–21 through 319.37–23.

§ 319.37–4 Taxa of plants for planting whose importation is not authorized pending pest risk analysis.

(a) *Determination by the Administrator.* The importation of certain taxa of plants for planting poses a risk of introducing quarantine pests into the United States. Therefore, the importation of these taxa is not authorized pending the completion of a pest risk analysis, except as provided in paragraph (f) of this section. These taxa are listed in the Plants for Planting Manual. There are two lists of taxa whose importation is not authorized pending pest risk analysis: A list of taxa of plants for planting that are quarantine pests, and a list of taxa of plants for planting that are hosts of quarantine pests. For taxa of plants for planting that have been determined to be quarantine pests, the list includes the names of the taxa. For taxa of plants for planting that are hosts of quarantine pests, the list includes the names of the taxa, the foreign places from which the taxa's importation is not authorized, and the quarantine pests of concern.

(b) *Addition of taxa.* A taxon of plants for planting may be added to one of the lists of taxa not authorized for importation pending pest risk analysis under this section as follows:

(1) *Data sheet.* APHIS will publish in the **Federal Register** a notice that announces our determination that a taxon of plants for planting is either a quarantine pest or a host of a quarantine pest. This notice will make available a data sheet that details the scientific evidence APHIS evaluated in making the determination that the taxon is a quarantine pest or a host of a quarantine pest. The data sheet will include references to the scientific evidence that APHIS used in making the determination. In our notice, we will provide for a public comment period of a minimum of 60 days on our addition to the list.

(2) *Response to comments.* (i) APHIS will issue a notice after the close of the public comment period indicating that the taxon will be added to the list of taxa not authorized for importation pending pest risk analysis if:

(A) No comments were received on the data sheet;

(B) The comments on the data sheet revealed that no changes to the data sheet were necessary; or

(C) Changes to the data sheet were made in response to public comments, but the changes did not affect APHIS' determination that the taxon poses a risk of introducing a quarantine pest into the United States.

(ii) If comments present information that leads us to determine that the importation of the taxon does not pose a risk of introducing a quarantine pest into the United States, APHIS will not add the taxon to the list of plants for planting whose importation is not authorized pending pest risk analysis. APHIS will issue a notice giving public notice of this determination after the close of the comment period.

(c) *Criterion for listing a taxon of plants for planting as a quarantine pest.* A taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a quarantine pest.

(d) *Criteria for listing a taxon of plants for planting as a host of a quarantine pest.* A taxon will be added to the list of taxa whose importation is not authorized pending pest risk analysis if scientific evidence causes APHIS to determine that the taxon is a host of a quarantine pest. The following criteria must be fulfilled in order to make this determination:

(1) The plant pest in question must be determined to be a quarantine pest; and

(2) The taxon of plants for planting must be determined to be a host of that quarantine pest.

(e) *Removing a taxon from the list of taxa not authorized pending pest risk analysis.* (1) Requests to remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis must be made in accordance with § 319.5 of this part. APHIS will conduct a pest risk analysis in response to such a request. The pest risk analysis will examine the risk associated with the importation of that taxon as well as measures available to mitigate that risk. The pest risk analysis may analyze importation of the taxon from a specific area, country, or countries, or from all areas of the world. The conclusions of the pest risk analysis will apply accordingly.

(2) If the pest risk analysis indicates that the taxon is a quarantine pest or a host of a quarantine pest and the Administrator determines that there are no measures available that adequately mitigate the risk of introducing a quarantine pest into the United States through the taxon's importation, we will continue to list the taxon as not authorized for importation pending pest risk analysis. We will publish a notice making the pest risk analysis available for comment. If comments cause us to change our determination, we will publish another notice in accordance with either paragraph (e)(3) or paragraph (e)(4) of this section, as appropriate. If comments do not cause us to change our determination, we will publish a second notice responding to the comments and affirming our determination that the taxon should continue to be listed as NAPPRA.

(3) If the pest risk analysis supports a determination that importation of the taxon be allowed subject to taxon-specific restrictions, APHIS will publish a notice making the pest risk analysis available to the public for comment in accordance with the process in § 319.37–20(c).

(4) If the pest risk analysis supports a determination that importation of the taxon be allowed subject to the general restrictions of this subpart, APHIS will publish a notice announcing our intent

to remove the taxon from the list of taxa whose importation is not authorized pending pest risk analysis and making the pest risk analysis supporting the taxon's removal available for public comment.

(i) APHIS will issue a notice after the close of the public comment period indicating that the importation of the taxon will be subject only to the general restrictions of this subpart if:

(A) No comments were received on the pest risk analysis;

(B) The comments on the pest risk analysis revealed that no changes to the pest risk analysis were necessary; or

(C) Changes to the pest risk analysis were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination that the importation of the taxon does not pose a risk of introducing a quarantine pest into the United States.

(ii) If information presented by commenters indicates that the pest risk analysis needs to be revised, APHIS will issue a notice after the close of the public comment period indicating that the importation of the taxon will continue to be listed as not authorized pending pest risk analysis while the information presented by commenters is analyzed and incorporated into the pest risk analysis. APHIS will subsequently publish a new notice announcing the availability of the revised pest risk analysis.

(5) APHIS may also remove a taxon from the list of taxa whose importation is not authorized pending pest risk analysis when APHIS determines that the evidence used to add the taxon to the list was erroneous (for example, involving a taxonomic misidentification).

(f) *Departmental permits.* Any plants for planting whose importation is not authorized pending pest risk analysis in accordance with this section may be imported or offered for entry into the United States if:

(1) Imported by the United States Department of Agriculture for experimental or scientific purposes;

(2) Imported at the National Plant Germplasm Inspection Station, Building 580, Beltsville Agricultural Research Center East, Beltsville, MD 20705 or through any Federal plant inspection station listed in the Plants for Planting Manual;

(3) Imported pursuant to a Departmental permit issued for such plants for planting and kept on file at the port of entry;

(4) Imported under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction into the United States of quarantine pests, i.e., conditions of treatment, processing, growing, shipment, disposal; and

(5) Imported with a Departmental tag or label securely attached to the outside of the container containing the plants for planting or securely attached to the plant itself if not in a container, and with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such plants for planting.

§ 319.37–5 Permits.

(a)(1) Plants for planting may be imported or offered for importation into the United States only after issuance of a written permit by the Plant Protection and Quarantine Programs, except as provided in the Plants for Planting Manual. Exceptions from the requirement for a written permit will be added, changed, or removed in accordance with § 319.37–20.

(2) Plants for planting whose importation is subject to postentry quarantine, as listed in the Plants for Planting Manual must also be imported under an importer postentry quarantine growing agreement in accordance with § 319.37–23(c).

(b) An application for a written permit should be submitted to the Plant Protection and Quarantine Programs (Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permits, Permit Unit, 4700 River Road Unit 133, Riverdale, MD 20737–1236) at least 30 days prior to arrival of the plants for planting at the port of entry. Application forms are available without charge from that address or on the Internet at *http://www.aphis.usda.gov/permits/ppq_epermits.shtml*. The completed application shall include the following information:

(1) Name, address, and telephone number of the importer;

(2) The taxon or taxa and the approximate quantity of plants for planting intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

(c) A permit indicating the applicable conditions for importation under this subpart will be issued by Plant Protection and Quarantine Programs if, after review of the application, the plants for planting are deemed eligible to be imported into the United States under the conditions specified in the permit. However, even if such a permit is issued, the plants for planting may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of entry determines that no remedial measures pursuant to the Plant Protection Act are necessary with respect to the plants for planting.[1]

(d) Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the holder thereof has not complied with any condition for the use of the document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(e) Any plants for planting not required to be imported with a permit in accordance with paragraph (a) of this section may be imported or offered for importation into the United States only after issuance of an oral permit for importation issued by an inspector at the port of entry.

(f) An oral permit for importation of plants for planting shall be issued at a port of entry by an inspector only if all applicable requirements of this subpart are met, such plants for planting are eligible to be imported under an oral permit, and an inspector at the port of entry determines that no measures pursuant to section 414 of the Plant Protection Act (7 U.S.C. 7714) are necessary with respect to such plants for planting.[1]

§ 319.37–6 Phytosanitary certificates.

(a) *Phytosanitary certificates.* Any plants for planting offered for importation into the United States must be accompanied by a phytosanitary certificate, except as described in paragraphs (b) and (c) of this section.

[1] An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

The phytosanitary certificate must identify the genus of the plants for planting it accompanies. When the importation of individual species or cultivars within a genus is restricted in accordance with § 319.37–20, the phytosanitary certificate must also identify the species or cultivar of the plants for planting it accompanies. Otherwise, identification of the species is strongly preferred, but not required. Intergeneric and interspecific hybrids must be designated by placing the multiplication sign "×" between the names of the parent taxa. If the hybrid is named, the multiplication sign may instead be placed before the name of an intergeneric hybrid or before the epithet in the name of an interspecific hybrid.

(b) *Small lots of seed.* Lots of seed may be imported without a phytosanitary certificate required by paragraph (a) of this section under the following conditions:

(1) The importation of the seed is authorized by a written permit issued in accordance with § 319.37–5.

(2) The seed is not listed as not authorized pending pest risk analysis, as provided in § 319.37–4; is not of any noxious weed species listed in part 360 of this chapter; is not subject to restrictions on specific types of plants for planting as provided in § 319.37–20; is not restricted under the regulations in parts 330 and 340 of this chapter; and meets the requirements of part 361 of this chapter.

(3) The seed meets the following packaging and shipping requirements:

(i) Each seed packet is clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level;

(ii) There are a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet; or a maximum weight not to exceed 10 grams of seed of 1 taxon per packet;

(iii) There are a maximum of 50 seed packets per shipment;

(iv) The seeds are free from pesticides;

(v) The seeds are securely packaged in packets or envelopes and sealed to prevent spillage;

(vi) The shipment is free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, mites; and

(vii) At the time of importation, the shipment is sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a USDA plant inspection station.

(c) *Importation of other plants for planting without phytosanitary certificates.* (1) The Administrator may authorize the importation of types of plants for planting without a phytosanitary certificate if the plants for planting are accompanied by equivalent documentation agreed upon by the Administrator and the NPPO of the exporting country as sufficient to establish the origin, identity, and quarantine pest status of the plants. The documentation must be provided by the NPPO or refer to documentation of the origin, identity, and quarantine pest status of the plants for planting provided by the NPPO. The documentation must be agreed upon before the plants for planting are exported from the exporting country to the United States.

(2) The Administrator may impose additional restrictions on the importation of plants for planting that are not accompanied by a phytosanitary certificate to ensure that the plants are appropriately identified and free of quarantine pests.

(3) The Plants for Planting Manual lists types of plants for planting that are not required to be accompanied by a phytosanitary certificate; the countries from which their importation without a phytosanitary certificate is authorized; the approved documentation of their origin, identity, and quarantine pest status; and any additional conditions on their importation.

(4) Types of plants for planting may be added to or removed from the list of plants for planting that are not required to be accompanied by a phytosanitary certificate in accordance with § 319.37–20. The requirements for importing types of plants for planting without a phytosanitary certificate may also be changed in accordance with § 319.37–20. The notice published for comment will describe the documentation agreed upon by the Administrator and the NPPO of the exporting country and any additional restrictions to be imposed on the importation of the type of plants for planting.

§ 319.37–7 Marking and identity.

(a) Any plants for planting for importation other than by mail at the time of importation or offer for importation into the United States shall plainly and correctly bear on the outer container (if in a container) or the plants for planting (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the plants for planting,

(4) Name and address of consignee,

(5) Identifying shipper's mark and number, and

(6) Number of written permit authorizing the importation, if one was required under § 319.37–5.

(b) Any plants for planting for importation by mail shall be plainly and correctly addressed and mailed to the Plant Protection and Quarantine Programs at a port of entry listed in the Plants for Planting Manual as approved to receive imported plants for planting, shall be accompanied by a separate sheet of paper within the package plainly and correctly bearing the name, address, and telephone number of the intended recipient, and shall plainly and correctly bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the plants for planting, and

(4) Number of written permit authorizing the importation, if one was required under § 319.37–5.

(c) Any plants for planting for importation (by mail or otherwise), at the time of importation or offer for importation into the United States shall be accompanied by an invoice or packing list indicating the contents of the consignment.

§ 319.37–8 Ports of entry: Approved ports, notification of arrival, inspection, and refusal of entry.

(a) *Approved ports of entry.* Any plants for planting required to be imported under a written permit pursuant to § 319.37–5(a), if not precleared, may be imported or offered for importation only at a USDA plant inspection station listed in the Plants for Planting Manual. Ports of entry through which plants for planting must pass before arriving at these USDA plant inspection stations are listed in the Plants for Planting Manual. Any other plants for planting that are not required to be imported under a written permit pursuant to § 319.37–5(a) may be imported or offered for importation at any Customs designated port of entry indicated in 19 CFR 101.3(b)(1). Exceptions may be listed in § 330.104 of this chapter. Plants for planting that are required to be imported under a written permit that are also precleared in the country of export are not required to enter at an inspection station and may enter through any Customs port of entry. Exceptions may be listed in § 330.104 of this chapter.

(b) *Notification upon arrival at the port of entry.* Promptly upon arrival of any plants for planting at a port of entry,

the importer shall notify the Plant Protection and Quarantine Programs of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

(c) *Inspection and treatment.* Any plants for planting may be sampled and inspected by an inspector at the port of first arrival and/or under preclearance inspection arrangements in the country in which the plants for planting were grown, and must undergo treatment in accordance with part 305 of this chapter if treatment is ordered by the inspector. Any plants for planting found upon inspection to contain or be contaminated with quarantine pests that cannot be eliminated by treatment will be denied entry at the first United States port of arrival and must be destroyed or shipped to a point outside the United States.

(d) *Disposition of plants for planting not in compliance with this subpart.* The importer of any plants for planting denied entry for noncompliance with this subpart must, at the importer's expense and within the time specified in an emergency action notification (PPQ Form 523), destroy, ship to a point outside the United States, treat in accordance with part 305 of this chapter, or apply other safeguards to the plants for planting, as prescribed by an inspector, to prevent the introduction into the United States of quarantine pests. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the plant pest associated with the plants for planting, whether the plants for planting are a host of the pest, the types of other host materials for the pest in or near the port, the climate and season at the port in relation to the pest's survival range, and the availability of treatment facilities for the plants for planting.

(e) *Removal of plants for planting from port of first arrival.* No person shall remove any plants for planting from the port of first arrival unless and until notice is given to the collector of customs by the inspector that the plants for planting has satisfied all requirements under this subpart.

§ 319.37–9 Treatment of plants for planting; costs and charges for inspection and treatment; treatments applied outside the United States.

(a) The services of a Plant Protection and Quarantine inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[2] No charge will be made to the importer for Government-owned or -controlled special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies required in handling an importation under the regulations in this subpart. The Plant Protection and Quarantine Programs will not be responsible for any costs or charges, other than those indicated in this section.

(b) Any treatment performed in the United States on plants for planting must be performed at the time of importation into the United States. Treatment shall be performed by an inspector or under an inspector's supervision at a Government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at nongovernment expense under the supervision of an inspector and in accordance with part 305 of this chapter and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any quarantine pests. However, treatment may be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, the plants for planting can be transported to such nongovernmental facility without the risk of introduction into the United States of quarantine pests.

(c) Any treatment performed outside the United States must be monitored and certified by an APHIS inspector or an official from the NPPO of the exporting country. If monitored and certified by an official of the NPPO of the exporting country, then a phytosanitary certificate must be issued with the following declaration: "The consignment of (fill in taxon) has been treated in accordance with 7 CFR part 305." During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by quarantine pests.

§ 319.37–10 Growing media.

(a) Any plants for planting at the time of importation or offer for importation into the United States shall be free of sand, soil, earth, and other growing media, except as provided in paragraph (b), (c), or (d) of this section.

[2] Provisions relating to costs for other services of an inspector are contained in part 354.

(b) Plants for planting from Canada may be imported in any growing medium, except as restricted in the Plants for Planting Manual. Restrictions on growing media for specific types of plants for planting imported from Canada will be added, changed, or removed in accordance with § 319.37–20.

(c) Certain types of plants for planting growing solely in certain growing media listed in the Plants for Planting Manual may be imported established in such growing media. The Administrator has determined that the importation of the specified types of plants for planting in these growing media does not pose a risk of introducing quarantine pests into the United States. If the Administrator determines that a new growing medium may be added to the list of growing media in which imported plants for planting may be established, or that a growing medium currently listed for such purposes is no longer suitable for establishment of imported plants for planting, APHIS will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. After the close of the comment period, APHIS will publish another notice informing the public regarding the Administrator's decision on the change to the list of growing media in which imported types of plants for planting may be established.

(d) Certain types of plants for planting, as listed in the Plants for Planting Manual, may be imported when they are established in a growing medium approved by the Administrator and they are produced in accordance with additional requirements specified in the Plants for Planting Manual. Changes to the list of plants for planting that may be imported in growing media, and to the requirements for the importation of those types of plants for planting, will be made in accordance with § 319.37–20.

§ 319.37–11 Packing and approved packing material.

(a) Plants for planting for importation into the United States must not be packed in the same container as plants for planting whose importation into the United States is not authorized pending pest risk analysis in accordance with § 319.37–4.

(b) Any plants for planting at the time of importation or offer for importation into the United States shall not be packed in a packing material unless the plants were packed in the packing material immediately prior to shipment; such packing material is free from sand, soil, or earth (except as designated in

the Plants for Planting Manual); has not been used previously as packing material or otherwise; and is approved by the Administrator as not posing a risk of introducing quarantine pests. Approved packing materials are listed in the Plants for Planting Manual.

(c) If the Administrator determines that a new packing material may be added to the list of packing materials, or that a packing material currently listed should no longer be approved, APHIS will publish in the **Federal Register** a notice that announces our determination and requests comment on the change. After the close of the comment period, APHIS will publish another notice informing the public regarding the Administrator's decision on the change to the list of approved packing materials.

§§ 319–37–12 through 319.37–19 [Reserved]

§ 319.37–20 Restrictions on the importation of specific types of plants for planting.

(a) *Plant type-specific restrictions.* In addition to the general restrictions in this subpart, the Administrator may impose additional restrictions on the importation of specific types of plants for planting necessary to effectively mitigate the risk of introducing quarantine pests into the United States through the importation of those plants for planting. Additional restrictions may be placed on the importation of the entire plant or on certain plant parts. A list of the types of plants for planting whose importation is subject to additional restrictions, and the specific restrictions that apply to the importation of each type of plants for planting, may be found in the Plants for Planting Manual.

(b) *Basis for changing restrictions.* The Administrator may determine that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting, based on the risk of introducing a quarantine pest through the importation of that type of plants for planting. The Administrator will make this determination based on the findings of a pest risk analysis or on other scientific evidence.

(c) *Process for adding, changing, or removing restrictions.* Restrictions on the importation of a specific type of plants for planting beyond the general restrictions in §§ 319.37–5 through 319.37–11 will be changed through the following process:

(1) *Document describing restrictions.* APHIS will publish in the **Federal Register** a notice that announces our determination that it is necessary to add, change, or remove restrictions on the importation of a specific type of plants for planting. This notice will make available for public comment a document describing the restrictions that the Administrator has determined are necessary and how these restrictions will mitigate the risk of introducing quarantine pests into the United States.

(2) *Response to comments.* APHIS will issue a notice after the close of the public comment period on the notice described in paragraph (c)(1) of this section. This notice will inform the public of the specific restrictions, if any, that the Administrator has determined to be necessary in order to mitigate the risk of introducing quarantine pests into the United States through the importation of the type of plants for planting. In response to the information submitted in public comments, the Administrator may implement the restrictions described in the document made available by the initial notice, amend the restrictions in response to public comment, or determine that changes to the restrictions on the importation of the type of plants for planting are unnecessary.

(d) *Previously imposed restrictions on specific types of plants for planting.* Types of plants for planting whose importation was subject to specific restrictions by specific regulation as of [*insert effective date of final rule*] will continue to be subject to those restrictions, except as changed in accordance with the process specified in paragraph (c) of this section. The restrictions will be found in the Plants for Planting Manual.

§ 319.37–21 Integrated pest risk management measures.

If a type of plants for planting is a host of a quarantine pest or pests, APHIS may require the type of plants for planting to be produced in accordance with integrated pest risk management measures as a condition of importation. This section sets out a general framework for integrated pest risk management measures. When appropriate, APHIS will require a type of plants for planting to be imported subject to integrated pest risk management measures that mitigate the quarantine pest risks associated with that type of plants for planting through the process described in § 319.37–20.

(a) *Responsibilities of the place of production.* The place of production is responsible for identifying, developing, and implementing procedures that meet the requirements of both the NPPO of the exporting country and APHIS. Participants in the export program must be approved by the NPPO or its designee and APHIS. Approval will be conferred by the NPPO or its designee and APHIS after the participant meets the conditions required for integrated pest risk management. Approval will be withdrawn if the participant fails to meet the conditions at any time. All documentation required under paragraph (a)(5) of this section will be maintained by the exporting place of production and made available to official representatives of the NPPO of the exporting country and APHIS upon request. The place of production must be open to necessary and reasonable audit, monitoring, and evaluation of compliance by the NPPO of the exporting country and APHIS. The management of the place of production will be responsible for complying with the integrated pest risk management measures. Management must specify the roles and responsibilities of its personnel to perform program activities. The place of production must notify the NPPO of the exporting country of deficiencies detected during internal audits. The NPPO of the exporting country will be responsible for ensuring that the place of production is in compliance with the integrated pest risk management measures.

(1) *Pest management program.* The place of production must develop and implement an approved pest management program that contains ongoing pest monitoring and procedures for the exclusion and control of plant pests. The place of production must obtain material used to produce plants for planting from sources that are free of quarantine pests and that are approved by the NPPO of the exporting country and APHIS. All sources of plants for planting and the phytosanitary status of those plants must be well-documented and the program for producing plants for planting carefully monitored.

(2) *Training.* A training program approved by the NPPO of the exporting country and APHIS must be established, documented, and regularly conducted at the place of production. The training program must ensure that all those involved in the export program possess specific knowledge related to the relevant components of the program and a general understanding of its requirements.

(3) *Internal audits.* The place of production must perform, or designate parties to perform internal audits that ensure that a plan approved and documented by APHIS and the NPPO of the exporting country is being followed and is achieving the appropriate level of pest management.

(4) *Traceability.* The place of production must implement a procedure

approved by APHIS and the NPPO of the exporting country or its designee that documents and identifies plants from propagation through harvest and sale to ensure that plants can be traced forward and back from the place of production. The system must at a minimum account for:

(i) The origin and pest status of mother stock;

(ii) The year of propagation and the place of production of all plant parts that make up the plants for planting intended for export;

(iii) Geographic location of the place of production;

(iv) Location of plants for planting within the place of production;

(v) The plant taxon; and

(vi) The purchaser's identity.

(5) *Documentation of program procedures.* The place of production must develop a manual approved by the NPPO of the exporting country and APHIS that guides the place of production's operation and that includes the following components:

(i) Administrative procedures (including roles and responsibilities and training procedures);

(ii) Pest management plan;

(iii) Place of production internal audit procedures;

(iv) Management of noncompliant product or procedures;

(v) Traceability procedures; and

(vi) Recordkeeping systems.

(6) *Records.* A place of production must maintain records on its premises as specified by APHIS and the NPPO of the exporting country. These records must be made available to APHIS and the NPPO of the exporting country upon request. These documents include all the elements described in this paragraph (a) and copies of all internal and external audit documents and reports.

(b) *Responsibilities of APHIS and the NPPO of the exporting country.* APHIS and the NPPO of the exporting country are responsible for collaborating to establish program requirements, including workplans and compliance agreements as necessary, for recognizing and implementing particular import programs. Technically justified modifications to the program may be negotiated. The administration of program requirements must include such elements as clarification of terminology, testing and retesting requirements, eligibility, the nomenclature of certification levels, horticultural management, isolation and sanitation requirements, inspection, documentation, identification and labeling, quality assurance, noncompliance and remedial measures, and postentry quarantine requirements. The criteria for approving, suspending, removing, and reinstating approval for a particular program should be jointly developed and agreed upon by APHIS and the NPPO of the exporting country. Information should be exchanged between APHIS and the NPPO of the exporting country through officially designated contact points.

(c) *Responsibilities of the NPPO of the exporting country.* (1) The NPPO of the exporting country must provide sufficient information to APHIS to support the evaluation and acceptance of export programs. This may include:

(i) Specific identification of the commodity, place of production, and expected volume and frequency of consignments;

(ii) Relevant production, harvest, packing, handling, and transport details;

(iii) Pests associated with the plant including prevalence, distribution, and damage potential;

(iv) Risk management measures proposed for a pest management program; and

(v) Relevant efficacy data.

(2) A phytosanitary certificate should be issued by the NPPO of the exporting country unless APHIS and the NPPO of the exporting country agree to use other documentation in accordance with § 319.37–6(c).

(3) Other responsibilities of the NPPO of the exporting country include:

(i) Establishing and maintaining compliance agreements as necessary;

(ii) Oversight and enforcement of program provisions;

(iii) Arrangements for monitoring and audit; and

(iv) Maintaining appropriate records.

(d) *Responsibilities of plant brokers trading in plants for planting for export.* Persons trading in plants for planting intended for export without growing the plants (referred to as plant brokers) must be approved by the NPPO of the exporting country or its designee. The list of plant brokers must be provided to APHIS upon request. Approval may only be conferred by the NPPO or its designee after the participant demonstrates that it can meet the requirements of this paragraph. Approval must be withdrawn if the participant fails to meet the conditions at any time. Plant brokers must ensure the traceability of export consignments to an approved place of production or production site. Brokers must maintain the phytosanitary status of the plants in a manner equivalent to an approved place of production from purchase, storage, and transportation to the export destination. Plant brokers must document these processes for verifying status and maintaining traceability.

(e) *External audits.* APHIS and the NPPO of the exporting country will agree to the requirements for external audits.

(1) *APHIS audits.* APHIS will evaluate the integrated pest risk management measures of the NPPO of the exporting country before acceptance. This could consist of documentation review, site visits, and inspection and testing of plants produced under the system. Following approval, APHIS or its designee will monitor and periodically audit the system to ensure that it continues to meet the stated objectives. Audits will include inspection of imported plants for planting, site visits, and review of the integrated pest risk management measures and internal audit processes of the place of production and the NPPO of the exporting country.

(2) *Audits by the NPPO of the exporting country.* The NPPO must arrange for audits of the exporting system. Audits may be conducted by the NPPO or its designee and may consist of inspection and testing of plants for planting and the documentation and management practices as they relate to the program. Audits should verify that:

(i) The places of production in the program are free of quarantine pests;

(ii) Program participants are complying with the specified standards;

(iii) The integrated pest management measures continue to meet APHIS requirements; and

(iv) Arrangements with designees are complied with.

(f) *Noncompliance.* (1) The exporting NPPO must notify APHIS of noncompliance within the integrity of the system or noncompliance by a place of production that affects the phytosanitary integrity of the commodity. The requirements for notification will be determined between the NPPO of the exporting country and APHIS.

(2) Regulatory responses to program failures will be based on existing bilateral agreements. Contingency plans may be established in advance to ensure that alternative measures are available in the event that all or part of a program fails. APHIS will specify the consequences of noncompliance to the NPPO of the exporting country. The NPPO must specify the consequences of noncompliance to the participants in the program. These may vary depending on the nature and severity of the infraction. In addition, remedial measures should be specified to enable a suspended or decertified place of production or plant broker to become eligible for reinstatement or recertification.

(3) Places of production or plant brokers that do not meet the conditions of the program must be suspended. Plants for planting must not be exported from a place of production or a plant broker that has failed to meet the program requirements.

(4) The effectiveness of remedial measures taken must be verified before reinstatement to the program by the exporting NPPO and, where appropriate, by APHIS.

§ 319.37–22 Trust fund agreements.

If APHIS personnel need to be physically present in an exporting country or region to facilitate the exportation of plants for planting and APHIS services are to be funded by the NPPO of the exporting country or a private export group, then the NPPO or the private export group must enter into a trust fund agreement with APHIS that is in effect at the time APHIS' services are needed. Under the agreement, the NPPO of the exporting country or the private export group must pay in advance all estimated costs that APHIS expects to incur in providing inspection services in the exporting country. These costs will include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing services. The agreement must require the NPPO of the exporting country or region or a private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. The agreement must further specify that, if the deposit is not sufficient to meet all costs incurred by APHIS, the NPPO of the exporting country or a private export group must deposit with APHIS, before the services will be completed, a certified or cashier's check for the amount of the remaining costs, as determined by APHIS. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO of the exporting country or region or a private export group, or held on account.

§ 319.37–23 Postentry quarantine.

(a) *Postentry quarantine.* One specific restriction that may be placed upon the importation of a type of plants for planting in accordance with § 319.37–20 is that it be grown in postentry quarantine. A list of taxa required to be imported into postentry quarantine may be found in the Plants for Planting Manual. Plants for planting grown in postentry quarantine must be grown under postentry quarantine conditions specified in paragraphs (c) and (d) of this section, and may be imported or offered for importation into the United States only:

(1) If destined for a State that has completed a State postentry quarantine agreement with APHIS in accordance with paragraph (b) of this section;

(2) If an importer postentry quarantine growing agreement has been completed and submitted to Plant Protection and Quarantine in accordance with paragraph (c) of this section. The agreement must be signed by the person (the importer) applying for a written permit for importation of the plants for planting in accordance with § 319.37–5; and,

(3) If Plant Protection and Quarantine has determined that the completed postentry quarantine growing agreement fulfills the applicable requirements of this section and that services by State inspectors are available to monitor and enforce the postentry quarantine.

(b) *State postentry quarantine agreement.* Plants for planting required to undergo postentry quarantine in accordance with § 319.37–20 may only be imported if destined for postentry quarantine growing in a State which has entered into a written agreement with the Animal and Plant Health Inspection Service, signed by the Administrator or his or her designee and by the State Plant Regulatory Official. In accordance with the laws of individual States, inspection and other postentry quarantine services provided by a State may be subject to charges imposed by the State. A list of States that have entered into a postentry quarantine agreement in accordance with this paragraph can be found in the Plants for Planting Manual.

(c) *Importer postentry quarantine growing agreements.* Any plants for planting required to be grown under postentry quarantine conditions, as well as any increase therefrom, shall be grown in accordance with an importer postentry quarantine growing agreement signed by the person (the importer) applying for a written permit in accordance with § 319.37–5 for importation of the plants for planting and submitted to Plant Protection and Quarantine. On each importer postentry quarantine growing agreement, the person shall also obtain the signature of the State Plant Regulatory Official for the State in which plants for planting covered by the agreement will be grown. The importer postentry quarantine growing agreement shall specify the kind, number, and origin of plants to be imported; the conditions specified in the Plants for Planting Manual under which the plants for planting will be grown, maintained, and labeled; and the reporting requirements in the case of abnormal or dead plants for planting. The agreement shall certify to APHIS and to the State in which the plants for planting are grown that the signer of the agreement will comply with the conditions of the agreement for the postentry quarantine growing period prescribed for the type of plants for planting in the Plants for Planting Manual.

(d) *Applications for permits.* A completed importer postentry quarantine agreement shall accompany the application for a written permit for plants for planting required to be grown under postentry quarantine conditions. Importer postentry quarantine agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737–1236 or on the Internet at *http://www.aphis.usda.gov/permits/ppq_epermits.shtml.*

(e) *Inspector-ordered disposal, movement, or safeguarding of plants for planting; costs and charges, civil and criminal liabilities*—(1) *Growing at unauthorized sites.* If an inspector determines that any plants for planting subject to the postentry quarantine growing requirements of this section, or any increase therefrom, is being grown at an unauthorized site, the inspector may file an emergency action notification (PPQ form 523) with the owner of the plants for planting or the person who owns or is in possession of the site on which the plants for planting is being grown. The person named in the form 523 must, within the time specified in form 523, sign a postentry quarantine growing agreement, destroy, ship to a point outside the United States, move to an authorized postentry quarantine site, and/or apply treatments or other safeguards to the plants for planting, the increase therefrom, or any portion of the plants for planting or the increase therefrom, as prescribed by an inspector to prevent the introduction of quarantine pests into the United States. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the quarantine pests associated with the type of plants for planting (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(2) *Growing at authorized sites.* If an inspector determines that any plants for planting, or any increase therefrom, grown at a site specified in an authorized postentry quarantine growing agreement is being grown contrary to the provisions of this section, including in numbers greater than the number approved by the postentry quarantine growing agreement, or in a manner that otherwise presents a risk of introducing quarantine pests into the United States, the inspector shall issue an emergency action notification (PPQ form 523) to the person who signed the postentry quarantine growing agreement. That person shall be responsible for carrying out all actions specified in the emergency action notification. The emergency action notification may extend the time for which the plants for planting and the increase therefrom must be grown under the postentry quarantine conditions specified in the authorized postentry quarantine growing agreement, or may require that the person named in the notification must destroy, ship to a point outside the United States, or apply treatments or other safeguards to the plants for planting, the increase therefrom, or any portion of the plants for planting or the increase therefrom, within the time specified in the emergency action notification. In choosing which action to order and in setting the time limit for the action, the inspector shall consider the degree of pest risk presented by the quarantine pests associated with the type of plants for planting (including increase therefrom), the types of other host materials for the pest in or near the growing site, the climate and season at the site in relation to the pest's survival, and the availability of treatment facilities.

(3) *Costs and charges.* All costs pursuant to any action ordered by an inspector in accordance with this section shall be borne by the person who signed the postentry quarantine growing agreement covering the site where the plants for planting were grown, or if no such agreement was signed, by the owner of the plants for planting at the growing site.

§ 319.40–2 [Amended]

■ 8. In § 319.40–2, paragraph (c) is amended by removing the words "Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" and adding the words "Plants for Planting" in their place.

■ 9. Section 319.41 is amended as follows:

■ a. By redesignating paragraph (d) as paragraph (e).

■ b. By adding a new paragraph (d) to read as set forth below.

§ 319.41 Notice of quarantine.

* * * * *

(d) The importation of plants (including any plant parts) of any of the taxa listed in paragraph (b) of this section that are for planting or capable of being planted is restricted under "Subpart—Plants for Planting" of this part.

* * * * *

■ 10. Section 319.55 is amended as follows:

■ a. By revising paragraphs (a) and (b) to read as set forth below.

■ b. By redesignating paragraph (d) as paragraph (e).

■ c. By adding a new paragraph (d) to read as set forth below.

§ 319.55 Notice of quarantine.

(a) The fact has been determined by the Secretary of Agriculture, and notice is hereby given:

(1) That injurious fungous diseases of rice, including downy, mildew (*Sclerospora macrospora*), leaf smut (*Entyloma oryzae*), blight (*Oospora oryzetorum*), and glume blotch (*Melanomma glumarum*), as well as dangerous insect pests, new to and not heretofore widely prevalent or distributed within and throughout the United States, exist, as to one or more of such diseases and pests, in Europe, Asia, Africa, Central America, South America, and other foreign countries and localities, and may be introduced into this country through importations of rice straw and rice hulls; and

(2) That the unrestricted importation of rice straw and rice hulls may result in the entry into the United States of the injurious plant diseases heretofore enumerated, as well as insect pests.

(b) To prevent the introduction into the United States of the plant pests and diseases indicated above, the Secretary has determined that it is necessary to restrict the importation of rice straw and rice hulls from all foreign locations, except as otherwise provided in this subpart.

* * * * *

(d) The importation of seed or paddy rice is restricted under "Subpart—Plants for Planting" of this part.

* * * * *

§ 319.55–2 [Amended]

■ 11. Section 319.55–2 is amended as follows:

■ a. In paragraph (a), by removing the words "seed or paddy rice from Mexico or" and the words "from any country,".

■ b. In paragraph (c), by removing the word "mader" and adding the word "made" in its place.

§ 319.55–3 [Amended]

■ 12. Section 319.55–3 is amended as follows:

■ a. By removing paragraph (a) and redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

■ b. In newly redesignated paragraph (a), by removing the words "from all foreign countries".

■ c. In newly redesignated paragraph (b), by removing the words "seed or paddy rice," and by removing the comma after the word "straw".

§ 319.55–6 [Amended]

■ 13. Section 319.55–6 is amended as follows:

■ a. By removing and reserving paragraph (a).

■ b. By redesignating paragraphs (c)(1) and (c)(2) as paragraphs (b)(3) and (b)(4).

■ c. By removing the designation and heading of paragraph (c).

§ 319.55–7 [Amended]

■ 14. Section 319.55–7 is amended by removing the words "seed and paddy rice from Mexico, and of" and the words "from all foreign countries and localities,".

§ 319.59–1 [Amended]

■ 15. In § 319.59–1, the definition of *grain* is amended by adding the words "and not for planting" before the period.

■ 16. Section 319.59–2 is amended as follows:

■ a. By removing and reserving paragraph (a).

■ b. In paragraph (b), by removing the words "*Triticum* spp. plants, articles" and adding the word "Articles" in their place.

■ c. By adding a new paragraph (c) to read as set forth below.

§ 319.59–2 General import prohibitions; exceptions.

* * * * *

(c) The importation of any host crops (including seed and any other plant parts) that are for planting or capable of being planted is restricted under "Subpart—Plants for Planting" of this part.

■ 17. Section 319.59–3 is amended by revising paragraph (a) to read as follows:

§ 319.59–3 Articles prohibited importation pending risk evaluation.

* * * * *

(a) The following articles of *Triticum* spp. (wheat) or of *Aegilops* spp. (barb goatgrass, goatgrass): Straw (other than straw, with or without heads, which has

been processed or manufactured for use indoors, such as for decorative purposes or for use in toys); chaff; and products of the milling process (i.e., bran, shorts, thistle sharps, and pollards) other than flour.

* * * * *

§ 319.59–4 [Amended]

■ 18. In § 319.59–4, paragraph (a)(2) is amended by removing the word "seed,".

§ 319.73–1 [Amended]

■ 19. In § 319.73–1, the definition of *unroasted coffee* is amended by adding the words "intended for processing" before the period.

■ 20. Section 319.73–2 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 319.73–2 Products prohibited importation.

(a) * * *

(2) Coffee leaves; and

* * * * *

(b) The importation of any coffee plants (including bare seeds, seeds in pulp, and any other plant parts) that are for planting or capable of being planted is restricted under "Subpart—Plants for Planting" of this part.

§ 319.74–1 [Amended]

■ 21. In § 319.74–1, the definition of *cut flower* is amended by adding the words "and not for planting" after the word "state".

§ 319.75–1 [Amended]

■ 22. Section 319.75–1 is amended by removing the definition of *nursery stock*.

■ 23. Section 319.75–2 is amended by revising footnote 1 to read as set forth below.

§ 319.75–2 Restricted articles.[1]

* * * * *

[1] The importation of restricted articles may be subject to prohibitions or restrictions under other provisions of 7 CFR part 319. For example, fresh whole chilies (*Capsicum* spp.) and fresh whole red peppers (*Capsicum* spp.) from Pakistan are prohibited from being imported into the United States under the provisions of Subpart—Fruits and Vegetables of this part, and the importation of any restricted articles that are for planting or capable of being planted is restricted under Subpart—Plants for Planting of this part.

§ 319.75–9 [Amended]

■ 24. In § 319.75–9, paragraphs (a), (b), and (c) are amended by removing the words "nursery stock, plant," and the words "root, bulb," each time they occur.

§ 319.77–2 [Amended]

■ 25. Section 319.77–2 is amended as follows:

■ a. In the introductory text of the section, by removing the words "through (g)" and adding the words "through (e)" in their place.

■ b. By removing paragraphs (b) and (c) and redesignating paragraphs (d) through (h) as (b) through (f), respectively.

■ 26. Section 319.77–4 is amended as follows:

■ a. By revising footnote 1 to read as set forth below.

■ b. In paragraphs (a)(1) and (a)(2), by removing the words ", trees with roots, and shrubs with roots and persistent woody stems" each time they occur.

■ c. In paragraphs (a)(2)(i) and (a)(2)(ii), by removing the words "or shrubs" each time they occur.

§ 319.77–4 Conditions for the importation of regulated articles.

(a) * * *[1]

* * * * *

[1] Trees and shrubs from Canada may be subject to additional restrictions under "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§319.40–1 through 310.40–11 of this part).

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

■ 27. The authority citation for part 340 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 340.0 [Amended]

■ 28. In § 340.0, footnote 1 is amended as follows:

■ a. By removing the words "Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" and adding the words "Plants for Planting" in their place.

■ b. By removing the words "nursery stock" both times they appear and adding the words "plants for planting" in their place.

■ c. By removing the words "stock is" and adding the words "plants are" in their place.

Done in Washington, DC, this 18th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–09737 Filed 4–24–13; 8:45 am]

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